No. 98-85 (14)

Supreme Court, U.S.
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In the

Supreme Court of the Unite

October Term, 1998

JAMES B. HUNT, JR., *et al.*,

Appellants,

and

ALFRED SMALLWOOD, *et al.*,

Intervenor-appellants,

v.

MARTIN CROMARTIE, *et al.*,

Appellees.

On Appeal from the United States District Court
Eastern District of North Carolina

JOINT APPENDIX

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Appeal docketed July 16, 1998
Probable Jurisdiction noted September 29, 1998

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CD = Civil Docket Number

* Designates that the document was previously provided in the appendix to the Jurisdictional Statement, docketed on July 16, 1998. The page reference to the Jurisdictional Statement appendix is provided.

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

July 3, 1996 - Complaint filed

July 12, 1996 - Motion with memorandum by Smallwood, Ward, Moore, Waddle and Hodges to intervene as defendants

August 27, 1996 - Plaintiffs' motion to stay action

September 4, 1996 - Order granting motion to stay

April 8, 1997 - Plaintiffs' motion to extend stay

April 18, 1997 - Order granting motion to extend stay

June 2, 1997 - Plaintiffs' unopposed motion to extend stay

June 11, 1997 - Order granting motion to extend stay

August 11, 1997 - Plaintiffs' unopposed motion for further extension of stay

August 19, 1997 - Order granting motion for further extension of stay

October 10, 1997 - Plaintiffs' motion to dissolve stay

October 17, 1997 - Order granting motion to dissolve stay

October 17, 1997 - Amended complaint filed

October 17, 1997 - Notice of voluntary dismissal by plaintiff Weeks

November 25, 1997 - Defendants file answer to amended complaint

November 26, 1997 - Motion with memorandum by Smallwood, Moore, Hodges, Davis, Valder, Offerman, Newell, Lambeth and Simkins to intervene as defendants

December 22, 1997 - Plaintiffs' motion to amend complaint

January 23, 1998 - Designation of Three-Judge Court

January 30, 1998 - Plaintiffs' motion for preliminary injunction

RELEVANT DOCKET ENTRIES, CONTINUED . . .

February 5, 1998 - Plaintiffs' motion for summary judgment with memorandum and affidavits of Mortimer, Weatherley, Froelich and Everett

February 10, 1998 - Defendants' motion to strike preliminary injunction motion for lack of supporting memorandum

February 17, 1998 - Plaintiffs' response to motion to strike

February 18, 1998 - Defendants' reply to plaintiffs' response to motion to strike

February 20, 1998 - Notice of motion hearing for March 16, 1998 re: motion for preliminary injunction

February 23, 1998 - Plaintiffs' memorandum in support of motion for preliminary injunction

February 25, 1998 - Defendants' motion to consolidate preliminary injunction hearing with hearing on cross-motions for summary judgment

February 27, 1998 - Clerk notation that counsel had been called and told that it was anticipated that the March 11, 1998 deadline would be enforced unless otherwise notified by the court

March 2, 1998 - Movant - defendant intervenors' response to motion for summary judgment and memorandum

March 2, 1998 - Defendants' motion for summary judgment and memorandum

March 2, 1998 - Defendants' response to motion for summary judgment

RELEVANT DOCKET ENTRIES, CONTINUED . . .

March 2, 1998 - Defendants' affidavit of Bartlett in support of motion for summary judgment and in response to motion for summary judgment

March 2, 1998 - Defendants' affidavits of Cooper, McMahan, Goldfield, Peterson, Stuart and Webster in support of motion for summary judgment

March 2, 1998 - Defendants' motion with memorandum in support to strike affidavits of Everett, Froelich, Williams, Weatherley and Mortimer

March 5, 1998 - Plaintiffs' motion to continue preliminary injunction hearing and time for filing materials

March 10, 1998 - Clerk notation that counsel had been called and told that the court could not come together on Monday, but the judges would reestablish a hearing date and plaintiffs have until March 23, 1998 to file briefs.

March 19, 1998 - Order granting motion to continue preliminary injunction and time for filing

March 20, 1998 - Defendants' response to motion for preliminary injunction with supporting affidavits of Jones, Myrick, Taylor, Clayton, Etheridge, Price and Bartlett

March 23, 1998 - Movant defendant-intervenors' response to motion for preliminary injunction

March 23, 1998 - Plaintiffs' response to motion to strike affidavits of Everett, Froelich, Williams, Weatherley and Mortimer

March 23, 1998 - Plaintiffs' response to motion for summary judgment

RELEVANT DOCKET ENTRIES, CONTINUED . . .

March 23, 1998 - Plaintiffs' supplemental memorandum in support of motion for summary judgment and motion for preliminary injunction

March 23, 1998 - Plaintiffs' declaration of Weber and affidavits of Everett, Darling, Cirincione, O'Rourke and McGee in support of motion response, motion for summary judgment and motion for preliminary injunction

March 23, 1998 - Plaintiffs' motion to strike affidavits of Cooper and McMahan

March 23, 1998 - Plaintiffs' motion for judicial notice of computer data

March 27, 1998 - Defendants' response to plaintiffs' motion for judicial notice of computer data

March 31, 1998 - Hearing: motions for summary judgment and motion for preliminary injunction

March 31, 1998 - Notice of appearance by Cox, Hodgkiss and Stein for movant defendant-intervenors

March 31, 1998 - Subsequently decided authority pursuant to LR 4.07 by defendants

April 3, 1998 - Order granting plaintiffs' motion for summary judgment as to twelfth congressional district, granting preliminary injunction and granting permanent injunction

April 6, 1998 - Judgment for plaintiffs

April 6, 1998 - Defendants' motion for stay of April 3 court order

April 6, 1998 - Order denying stay

April 6, 1998 - Defendants' notice of appeal filed

April 8, 1998 - Defendants' amended notice of appeal filed

RELEVANT DOCKET ENTRIES, CONTINUED . . .

April 14, 1998 - Findings of fact and conclusions of law re: April 3, 1998 order filed and order denying plaintiffs' motion for summary judgment as to first congressional district

April 14, 1998 - Judgment re: first congressional district

April 17, 1998 - Defendants' motion with supporting memorandum for reconsideration of order denying stay and to shorten time for plaintiffs' response

April 20, 1998 - Plaintiffs' response to defendants' motion for reconsideration of order denying stay and motion to shorten time for plaintiffs' response

April 21, 1998 - Order denying motion for reconsideration of order denying stay, mooting motion to shorten time for plaintiffs to respond

April 21, 1998 - Order on scheduling

May 22, 1998 - Submission of 1998 congressional redistricting plan filed by defendants

May 26, 1998 - Renewed motion with memorandum by Smallwood, Moore, Hodges, Davis, Valder, Offerman, Newell, Lambeth and Simkins to intervene as defendants

May 27, 1998 - Defendants' response to motion to intervene as defendants

May 27, 1998 - Plaintiffs' response in opposition to revised 1998 redistricting plan

June 1, 1998 - Defendants' response in support of 1998 redistricting submission and in opposition to plaintiffs' objections

RELEVANT DOCKET ENTRIES, CONTINUED . . .

June 1, 1998 - Defendants' affidavits of Cooper, McMahan, Cohen and Bartlett (3rd) in support of memorandum in support of 1998 redistricting plan

June 22, 1998 - Order granting motion to intervene as defendants (Smallwood, Moore, Hodges, Davis, Valder, Offerman, Newell, Lambeth and Simkins)

June 22, 1998 - Order directing that 1998 congressional elections proceed as scheduled in court's April 21, 1998 order and the matter to proceed with discovery and trial with parties ordered to submit discovery schedules by June 30

July 17, 1998 - Plaintiffs' notice of appeal filed

AMENDED COMPLAINT AND MOTION FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 4.96-CV- 1 04

MARTIN CROMARTIE, THOMAS CHANDLER MUSE, R.O. EVERETT, J.H. FROELICH, JAMES RONALD LINVILLE, and SUSAN HARDAWAY,
Plaintiffs,

vs.

JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, DENNIS WICKER in his official capacity as Lieutenant Governor of the State of North Carolina, HAROLD BRUBAKER in his official capacity as Speaker of the North Carolina House of Representatives, ELAINE MARSHALL in her official capacity as Secretary of State of North Carolina, and LARRY LEAKE, S. KATHERINE BURNETTE, FAIGER BLACKWELL, DOROTHY PRESSER and JUNE YOUNGBLOOD in their capacity as the North Carolina Board of Elections,
Defendants.

AMENDED COMPLAINT AND MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION

Pursuant to Federal Rule 15(a) of Civil Procedure, Plaintiffs file this Amended Complaint and. complaining of the Defendants, allege:

PRELIMINARY STATEMENT

This action challenges the constitutionality of the racially gerrymandered congressional redistricting plan which was enacted by the North Carolina General Assembly in late March 1997. The Plaintiffs' claim is grounded on the injury to Plaintiffs which will result if elections are conducted under this recently enacted plan because it is racially motivated and is predicated on the unconstitutional race-based plan which preceded it. This plan, a fruit of the poisonous tree planted in January 1992 by its predecessor, injures and impairs the important rights of plaintiffs as citizens and registered voters of the State of North Carolina; and it threatens to continue to injure and impair those rights into the next century and millennium. The rights infringed by the acts of the State Defendants are those granted expressly or implicitly by Article 1, Sections 2 and 4 of the United States Constitution and by the Fourteenth and Fifteenth Amendments.

Plaintiffs seek a declaration that the redistricting plan enacted by the General Assembly in March 1997 is unconstitutional; that the Defendants be enjoined from using that plan in the 1998 elections or any subsequent congressional elections; that no one be allowed to serve in Congress if elected

under the March 1997 plan; that this Court direct the General Assembly to draw promptly a plan that is not tainted by the current plan and that is prepared without regard to race, party or incumbency. and that, if the Legislature fails to prepare promptly and enact such a plan and obtain preclearance for it, this Court do so.

THE PARTIES

1. Plaintiffs Martin Cromartie and Thomas Chandler Muse are citizens and residents of Edgecombe County. North Carolina; Plaintiff R.O. Everett is a citizen and resident of Rowan County, North Carolina, Plaintiff J.H. Froelich. Jr. is a citizen and resident of Guilford County, North Carolina; Plaintiff James Ronald Linville is a citizen and resident of Forsyth County, North Carolina; and Plaintiff Susan Hardaway is a citizen and resident of Mecklenburg County. North Carolina. All the Plaintiffs are registered voters.

2. Defendant James Hunt is the Governor in and for the State of North Carolina; and, in such capacity, he is the Chief Executive Officer of the State charged with the duty of enforcing compliance with State legislation enacted under Article II, Sec. 5(4) of the Constitution of North Carolina. Moreover. it is the Governor's duty to issue a commission to a person elected to the United States House of Representatives upon that person's production to the Governor of a certificate

of his or her election from the Secretary of State, pursuant to N.C.G.S. Section 163-194. He is sued in his official capacity.

3. Defendant Dennis Wicker is Lieutenant Governor of North Carolina, and, as part of his official duties, he presides over the North Carolina Senate and certifies certain actions of the Senate. He is sued in his official capacity.

4. Defendant Harold Brubaker is the Speaker of the North Carolina House of Representatives and, in this capacity, he presides over that body and certifies certain actions taken by the House of Representatives. He is sued in his official capacity.

5. Defendant Elaine Marshall, Secretary of State of North Carolina, is charged with preparing a certificate of election for each person elected after the Board of Elections certifies the result to her, pursuant to N.C.G.S. Section 163-193, and with recording the results of elections for the United States House of Representatives, pursuant to N.C.G.S. Section 163-195. She is sued in her official capacity.

6. The North Carolina State Board of Elections is an official agency of the State of North Carolina, which has been established to supervise and conduct elections in the State of North Carolina, including elections for the United States House of Representatives. Defendant Larry Leake is the chairman and S. Katherine Burnette, Faiger Blackwell, Dorothy

Presser and June Youngblood are members of the North Carolina State Board of Elections. All of these Defendants are charged with exercising the powers and duties of the State Board of Elections pursuant to N.C.G.S. Section 163-22. These Defendants are all sued in their official capacity.

JURISDICTION AND VENUE

7. This action arises under Article I, Sections 2 and 4 and the Fourteenth and Fifteenth Amendments of the Constitution of the United States and under 42 U.S.C. Sections 1983 and 1988, and 2 U.S.C. Section 2a.

8. This Court has original jurisdiction of this action pursuant to 28 U.S.C. Sections 1331, 1343(a)(3) and (4), and 2284.

9. Venue exists under 28 U.S.C. Section 1391(b) because the enactment of the unconstitutional race-based redistricting plan and the acts and events which are the subject of this action occurred principally in Raleigh, North Carolina in the Eastern District of North Carolina.

THREE-JUDGE DISTRICT COURT

10. Convocation of a three-judge district court is required by 28 U.S.C. Section 2284 because this action

challenges the constitutionality of the statewide apportionment of congressional districts for the State of North Carolina.

HISTORY OF THE CASE

11. Since it became a State when the United States Constitution was ratified, North Carolina has elected its Representatives to Congress from single-member congressional districts and the plans for these districts have been amended by the North Carolina General Assembly from time to time to reflect the results of the decennial censuses and the number of Representatives allocated to North Carolina.

12. As a result of the 1980 census, North Carolina was entitled to eleven Representatives in the Congress; and those Representatives were elected under a plan adopted by the General Assembly which provided for eleven districts.

13. As a result of the 1990 census, North Carolina became entitled to twelve Representatives in the Congress; and the General Assembly undertook to prepare a redistricting plan that would contain twelve districts and that would receive preclearance of the plan from the Department of Justice, which, under Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973(b), had preclearance authority over forty North Carolina counties.

14. On July 9, 1991, the General Assembly enacted a redistricting plan which was predominantly motivated by race and contained a majority black district that was not compact or contiguous and did not conform to traditional redistricting principles.

15. Even though the 1991 plan enacted by the General Assembly was a racial gerrymander that sought to comply with unconstitutional requirements imposed by the Department of Justice under its preclearance authority, on December 18, 1991, the Civil Rights Division of the Department of Justice denied preclearance of that plan under Section 5 of the Voting Rights Act.

16. In January 1992, the General Assembly enacted a second redistricting plan, which also was predominately motivated by race. This plan had two bizarre majority-black districts, the First and the Twelfth. Neither of these districts was geographically compact or contiguous and the boundaries of each district defied traditional principles of redistricting.

17. Thereafter in March 1992, a lawsuit was commenced by five Durham voters against the Governor and various other State Defendants, in which those Plaintiffs attacked the constitutionality of the redistricting plan and especially the First and Twelfth Districts.

18. In that litigation, the Supreme Court held in the first appeal by those Plaintiffs that under the Equal Protection Clause of the Fourteenth Amendment they had stated a constitutional claim against the State Defendants in that action. See *Shaw v. Reno*, 509 U.S. 630 (1993).

19. On remand, various persons intervened in that case on the side of those Plaintiffs or on the side of the State Defendants, and a trial took place before a three-judge district court. In that trial the district court held unanimously that the redistricting plan was predominantly racially motivated, but ruled by divided vote that the plan survived the test of strict scrutiny. The Plaintiffs in that case appealed successfully to the Supreme Court, which held on June 13, 1996 that the Twelfth District was race-based and did not meet the test of strict scrutiny and therefore was an unconstitutional racial gerrymander. See *Shaw v. Hunt*, 116 S. Ct. 1894 (1996). The Supreme Court also held that neither the Plaintiffs nor the Plaintiff-intervenors in that action had standing to raise the issue of unconstitutionality of the First District, because none was a registered voter in that district. *Ibid.*

20. On July 3, 1996, two of the present Plaintiffs -- together with a third registered voter from Edgecombe County -- commenced the present action, in which they complained that the First District as it existed under the January 1992 plan was an unconstitutional racial gerrymander violating the Equal Protection Clause of the Fourteenth Amendment.

21. Subsequent proceedings were stayed in this action in order to await the outcome of any further proceedings in the *Shaw* litigation and thereafter to await possible legislative action by the General Assembly to replace with a new plan the unconstitutional racially gerrymandered redistricting plan enacted in January 1992.

22. Late in March 1997, the General Assembly enacted 97 House/Senate Plan A contained in Section 2 of Chapter 11 of the North Carolina General Assembly's 1997 Session Laws, a new plan which in various respects revised the First and Twelfth Districts as well as other districts.

23. As a result of the general elections conducted in November 1996 under the redistricting plan which in June 1996 the Supreme Court had ruled unconstitutional, six Democrats and six Republicans were elected to Congress and continue to serve there at the present time. One of the Democratic members of Congress, Melvin Watt, is an African-American elected from the racially gerrymandered Twelfth District and another, Eva Clayton, is an African-American elected from the racially-gerrymandered First District. Both of these Representatives were elected in 1992 pursuant to the intent of the General Assembly to assure that two African-Americans be elected to the Congress from North Carolina.

24. In devising and enacting this plan, the North Carolina General Assembly, in which the House of

Representatives was controlled by Republicans and the Senate by Democrats, intended to perpetuate the results of the November 1996 congressional elections that had been conducted under the unconstitutional plan enacted in January 1992.

25. To accomplish this result the General Assembly used as its starting point the unconstitutional plan of January 1992 under which the November 1996 election had been conducted. Under the 1992 plan, portions of Greensboro, High Point and Winston-Salem, the three cities of the Triad, were placed in the Twelfth District with parts of Charlotte, a different metropolitan area. This linkage, which was unprecedented and did not conform to traditional redistricting principles, was intended by the General Assembly to assure the reelection to Congress of an African-American, Melvin Watt. The First District was also created by the General Assembly in a manner contrary to traditional redistricting principles in order to assure the reelection to Congress of an African-American, Eva Clayton.

26. Acting with a predominantly racial motive, and acting under a court-imposed deadline, the General Assembly enacted in late March, 1997 a redistricting plan in which the Twelfth District was composed of parts of six counties. Each of those six counties was divided along racial lines and for a predominantly racial motive. Of Mecklenburg County's black population, 84% was placed in the Twelfth District and 16% in

the Ninth; but of its white population 27% was placed in the Twelfth District and 73% in the Ninth. Of Forsyth County's black population, 65% was placed in the Twelfth District and 35% in the Fifth District; but of its white population, 8% was placed in the Twelfth District and 92% in the Fifth. Of Guilford County's black population, 76% was placed in the Twelfth District and 24% in the Sixth; but of its white population, 25% was placed in the Twelfth District and 75% in the Sixth. Of Iredell County's black population, 63% was placed in the Twelfth District and 37% in the Tenth; but of its white population, 37% was placed in the Twelfth District and 63% in the Tenth. Of Rowan County's black population, 66% was placed in the Twelfth District and 34% in the Sixth; but of its white population, 23% was placed in the Twelfth District and 77% in the Sixth. Of Davidson County's black population 80% was placed in the Twelfth District and twenty percent 20% in the Sixth District; but of its white population, 49.6% was placed in the Twelfth District and 50.4% in the Sixth District. The Twelfth District is the only congressional district which under the March 1997 plan contains no county which is not divided.

27. Since 1793, Mecklenburg and Guilford Counties have never been in the same district until the unconstitutional race-based plan of January 1992 was enacted. Since its creation, Forsyth County had never been in the same congressional district with Mecklenburg County until 1992.

28. Under the March 1997 redistricting plan, the Twelfth District and First District have boundaries which were drawn pursuant to a predominantly racial motivation. Absent that predominantly racial motivation, those districts would have far different boundaries. Had the General Assembly never adopted its unconstitutional racially gerrymandered plans in July 1991 and January 1992, the March 1997 plan would have contained districts quite different from those in the March 1997 plan; and neither the Twelfth nor the First District would have its present form.

29. Because they result from and are caused by the predominantly racial motivation that gave rise to the January 1992 and July 1991 plans, the March 1997 plan is the fruit of those racially gerrymandered plans -- and is tainted by them.

CLAIM FOR RELIEF

30. The preceding allegations of this Complaint are incorporated herein by reference and realleged.

31. Plaintiffs Cromartie and Muse are registered voters in the new First District and each has standing to contest the March 1997 plan, which deprives them of their right to equal protection under the Fourteenth Amendment and abridges their rights as registered voters under the Fifteenth Amendment.

32. Plaintiffs Everett, Froelich, Linville and Hardaway are registered voters in the new Twelfth District and each has standing to contest the March 1997 redistricting plan, which deprives them of their right to equal protection under the Fourteenth Amendment and abridges their rights as registered voters under the Fifteenth Amendment.

33. The Plaintiffs, as citizens and residents of the State of North Carolina, are part of its "people;" and as registered voters in the State, they have, under Article 1, Section 2 of the United States Constitution a right to choose members of Congress in districts that are not race-based, either directly or indirectly.

34. The right of the Plaintiffs to vote for members of the House of Representatives is a right for which the Plaintiffs are entitled to the "equal protection of the laws," with respect to any action taken by the State of North Carolina. Moreover, this right to vote for members of the House of Representatives of the United States is a "privilege" of citizens of the United States within the meaning of the Fourteenth Amendment and is protected by that amendment from being abridged by the State of North Carolina. The right of the Plaintiffs as citizens of the United States to vote for members of the House of Representatives is also protected by the Fifteenth Amendment against being "abridged" by the State of North Carolina on account of the race or color of the Plaintiffs.

35. Any action by officers of the State of North Carolina which discriminates on the basis of race or color violates this right of Plaintiffs to vote for members of Congress; denies the Plaintiffs and all other voters equal protection of the laws; and on account of race or color abridges their right to vote.

36. The State Defendants shared an unconstitutional and racially discriminatory intent and purpose and pursuant to that intent they created congressional districts along racial lines with the purpose of assuring that two African-American representatives would be elected to Congress from North Carolina. In so acting, the General Assembly violated Plaintiffs' equal protection rights.

WHEREFORE, Plaintiffs respectfully pray that:

1. The United States District Court Judge to whom this case is initially assigned immediately notify the Chief Judge of the United States Court of Appeals for the Fourth Circuit so that a three-judge Court may be convened to hear this case in as expeditious a manner as feasible.

2. The Court declare the 1997 congressional redistricting plan to be unconstitutional and of no further force and effect insofar as it purports to establish congressional districts for the State of North Carolina.

3. The Court direct the General Assembly to prepare promptly a new redistricting plan for the State of North Carolina which will not be derived from any earlier unconstitutional plan and which will not concentrate in any congressional district persons of a particular race or color -- whether black, white, native American, or otherwise -- in a manner that is totally unrelated to considerations of compactness, contiguousness, and geographic or jurisdictional communities of interest; and if the General Assembly does not prepare promptly such a plan, then the Court itself prepare such a plan with the aid of suitable impartial experts.

4. The Court permanently enjoin the Defendants Leake, Burnette, Blackwell, Presser and Youngblood from conducting elections for the U.S. House of Representatives in North Carolina until the General Assembly enacts, and the Department of Justice preclears, a new redistricting plan as prayed for in Paragraph 3 above.

5. The Court enter both a temporary restraining order and preliminary injunction enjoining the Defendants Leake, Burnette, Blackwell, Presser and Youngblood from taking any action in preparation for primary or general elections for the U.S. House of Representatives in North Carolina until the General Assembly enacts and the Department of Justice preclears a new redistricting plan as prayed for in Paragraph 3 above.

AMENDED COMPLAINT, CONTINUED . . .

6. That for purposes of consideration of any injunctive relief this complaint, when properly verified, be treated as an affidavit in this action.

7. That the Court award cost and attorneys fees to the Plaintiffs as against the Defendants pursuant to the Equal Access To Justice Act 28 U.S.C. Section 2412 or as otherwise authorized by law.

8. That the Court grant such other and further relief as may, to the Court, seem just and proper.

AMENDED COMPLAINT, CONTINUED . . .

Respectfully submitted, this the 10th day of October 1997.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4-96-CV-104-H2

MARTIN CROMARTIE, THOMAS CHANDLER MUSE, and GLENNES DODGE WEEKS,	)
Plaintiffs,	)
v.	)
JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, *et al.*,	)
Defendants.	)

DEFENDANTS' ANSWER TO AMENDED COMPLAINT

Defendants, Governor James B. Hunt, *et al.* for their answer to plaintiffs' amended complaint, say and allege:

FIRST DEFENSE

PRELIMINARY STATEMENT

The allegations of plaintiffs' preliminary statement constitute legal contentions. To the extent an answer is required, the allegations are denied.

THE PARTIES

1. The allegations regarding the citizenship, residence and voter registration of the plaintiffs are admitted.

2. It is admitted that James B. Hunt, Jr. is the Governor of the State of North Carolina, sued in his official capacity, and that pursuant to Article III of the Constitution of North Carolina the executive power of the State is vested in the Governor and it is his duty to take care that the laws are faithfully executed. It is further admitted that pursuant to N.C. GEN. STAT. § 163-194, the Governor shall issue a commission attesting to a person's election as a member of the United States House of Representatives upon that person's production of a certificate of his or her election from the Secretary of State. Any remaining allegations in paragraph 2 are denied.

3. It is admitted that Dennis Wicker is the Lieutenant Governor of the State of North Carolina, sued in his official capacity, and that pursuant to Articles II and III of the Constitution of North Carolina, he is President of the Senate and performs such additional duties, including signing enacted legislation, as the General Assembly or the Governor may assign to him. Any remaining allegations in paragraph 3 are denied.

4. It is admitted that Harold Brubaker is the Speaker of the North Carolina House of Representatives, sued

in his official capacity, and performs duties, including signing enacted legislation, assigned to him by the House of Representatives. Any remaining allegations of paragraph 4 are denied.

5. The allegations of paragraph 5 are admitted.

6. The allegations of paragraph 6 are admitted.

JURISDICTION AND VENUE

7. It is admitted that plaintiffs rely upon the constitutional and statutory provisions cited in paragraph 7. Any remaining allegations are denied.

8. The allegations of paragraph 8 are admitted.

9. It is admitted that venue exists pursuant to 28 U.S.C. § 1319(b) in Raleigh, North Carolina in the United States District Court for the Eastern District of North Carolina, Western Division. Any remaining allegations in paragraph 9 are denied.

THREE-JUDGE COURT

10. The allegations of paragraph 10 are admitted.

HISTORY OF THE CASE

11. The allegations of paragraph 11 are admitted.

12. The allegations of paragraph 12 are admitted.

13. The allegations of paragraph 13 are admitted.

14. It is admitted that on July 9, 1991, the General Assembly enacted a congressional redistricting plan which included one majority African-American district. All remaining allegations of paragraph 14 are denied.

15. It is admitted that on December 18, 1991, the 1991 congressional plan was denied preclearance under § 5 of the Voting Rights Act by John R. Dunne, Assistant Attorney General, Civil Rights Division on behalf of the United States Attorney General. All remaining allegations of paragraph 15 are denied.

16. It is admitted that on January 24, 1992, the General Assembly enacted a second congressional redistricting plan which included two majority African-American districts. All remaining allegations of paragraph 16 are denied.

17. The allegations of paragraph 17 are admitted.

18. The allegations of paragraph 18 are legal contentions. To the extent an answer is required, the allegations are denied.

19. The allegations of paragraph 19 constitute legal contentions. To the extent an answer is required the courts' opinions speak for themselves and any remaining allegations are denied.

20. The allegations of paragraph 20 are admitted.

21. It is admitted that subsequent proceedings were stayed in this action pending the outcome of the proceedings in the *Shaw* litigation, including possible legislative action by the General Assembly to enact a new congressional redistricting plan to cure the constitutional defect held to exist in the 1992 plan. Any remaining allegations of paragraph 21 are denied.

22. The allegations of paragraph 22 are admitted.

23. It is admitted that general elections conducted in November 1996 under the plan ruled on by the Supreme Court in June 1996 resulted in the election of six Democrats and six Republicans to the United States House of Representatives and that these members continue to serve at the present time. It is further admitted that one of the Democrat members is Mel Watt, an African-American elected from the Twelfth District, and another Democrat member is Eva

Clayton, an African-American elected from the First District, and that both of these members were elected in these same districts in 1992. All remaining allegations of paragraph 23 are denied.

24. It is admitted that the North Carolina General Assembly, where the Republicans comprise a majority in the House of Representatives and the Democrats comprise a majority in the Senate, publicly stated that one of its goals in enacting a new congressional redistricting plan was to maintain the partisan balance of the State's congressional delegation which resulted from the 1996 elections and that the plan enacted by the General Assembly achieved that goal. All remaining allegations of paragraph 24 are denied.

25. It is admitted that in drawing a new congressional plan, the General Assembly publicly stated its goal to cure the constitutional defect identified by the Supreme Court in the 1992 plan and that the plan enacted by the General Assembly achieved that goal. It is further admitted that portions of the metropolitan areas of Charlotte, Greensboro, High Point and Winston-Salem were included in the Twelfth District in the 1992 plan. All remaining allegations of paragraph 25 are denied.

26. It is admitted that the General Assembly enacted a new Congressional redistricting plan on March 31, 1997, pursuant to a court-ordered deadline of April 1, 1997. It is

further admitted that the new Twelfth District includes parts of six counties and that the percentages of African-American and white populations in the counties and districts are approximately correct as stated. It is further admitted that the Twelfth District is the only congressional district in which all counties contained in the district have been divided between districts. All remaining allegations of paragraph 26 are denied.

27. From 1789 to 1792, Forsyth, Guilford and Mecklenburg counties were in the same congressional district and on numerous occassions after 1792 Forsyth and Guilford counties were in the same congressional district. However, it is admitted that from 1793 to 1992 Mecklenburg and Guildford Counties were never in the same congressional district and that from its creation until 1992 Forsyth County was never in the same congressional district as Mecklenburg County. Any remaining allegations of paragraph 27 are denied.

28. The allegations of paragraph 28 are denied.

29. The allegations of paragraph 28 are denied.

CLAIM FOR RELIEF

30. The preceding answers are incorporated by reference in answer to paragraph 30.

ANSWER, CONTINUED . . .

31. It is admitted that plaintiffs Cromartie and Muse are registered voters in the new First District. All remaining allegations are denied.

32. It is admitted that plaintiffs Everett, Froelich and Hardaway are registered voters in the new Twelfth District. All remaining allegations are denied.

33. The allegations of paragraph 33 are legal contentions. To the extent an answer is required, the allegations are denied.

34. The allegations of paragraph 33 are legal contentions. To the extent an answer is required, the allegations are denied.

35. The allegations of paragraph 33 are legal contentions. To the extent an answer is required, the allegations are denied.

36. The allegations of paragraph 36 are denied.

SECOND DEFENSE

Plaintiff Linville has standing to challenge neither the First nor Twelfth Districts.

ANSWER, CONTINUED . . .

THIRD DEFENSE

Plaintiffs have failed to state a claim for relief under the Fourteenth or Fifteenth Amendment.

FOURTH DEFENSE

The First and Twelth Congressional Districts are not racial gerrymanders.

FIFTH DEFENSE

The State has a compelling interest in complying with § 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c.

SIXTH DEFENSE

The State has a compelling interest in complying with § 2 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c.

SEVENTH DEFENSE

The State has a compelling interest in eradicating the effects of past racial discrimination.

EIGHTH DEFENSE

James B. Hunt, Dennis Wicker, Harold Brubaker and Elaine Marshall, sued in their official capacities, are not proper defendants to this action.

This the 25th day of November, 1997.

MICHAEL F. EASLEY
ATTORNEY GENERAL

/s/ Edwin M. Speas, Jr.
Senior Deputy Attorney General
N.C. State Bar No. 4112

/s/ Tiare B. Smiley
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[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 4:96-CV-104

MARTIN CROMARTIE, *et al.*, Plaintiffs,	)
vs.	)
JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, *et al.*, Defendants.	)

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure – and renewing the prayer for relief in their amended complaint – Plaintiffs move the Court for entry forthwith of a Preliminary Injunction prohibiting congressional elections from taking place under the current Congressional redistricting plan. In support of Plaintiffs' Motion, the Plaintiffs allege and state:

1. On July 9, 1991, the General Assembly enacted a congressional redistricting plan (the "First Plan") that created one of twelve congressional districts which was primarily based on race.

2. Even though the First Plan was itself a racial gerrymander, the Civil Rights Division of the Department of Justice, pursuant to its "maximization" policy, denied preclearance of that plan under Section 5 of the Voting Rights Act on December 18, 1991.

3. In January, 1992, the General Assembly enacted a second redistricting plan (the "Second Plan"), which was also predominately motivated by race. This plan had two bizarre majority-black districts, the First and the Twelfth, as well as other bizarre predominantly white districts. Neither of these districts was geographically compact or contiguous and the boundaries of each district defied traditional principles of redistricting.

4. Thereafter in March 1992, a lawsuit was commenced by five Durham voters against the Governor and various other State Defendants, in which those Plaintiffs attacked the constitutionality of the redistricting plan and especially the First and Twelfth Districts.

5. More than four years after the initiation of that litigation, acting on the Plaintiffs' second appeal to the United States Supreme Court, the

Court held on January 13, 1996 that the Twelfth District of the Second Plan was race-based and did not meet the test of strict scrutiny and therefore was an unconstitutional racial gerrymander. See Shaw v. Hunt 116 S.Ct. 1894 (1996). The Supreme Court also held that neither the Plaintiffs nor the Plaintiff-intervenors in that action had standing to raise the issue of unconstitutionality of the First District, because none was a registered voter in that district. Id.

6. Despite the Shaw Plaintiffs' motion to restrain the 1996 congressional elections from proceeding under the Second Plan, the elections were held for the third time under the plan that the Supreme Court had already declared to be unconstitutional.

7. Thus, at the end of the current session of Congress, North Carolina will have been served for six years by members of Congress who have been elected under an unconstitutional redistricting plan.

8. The Complaint in this action, which challenges the third congressional plan enacted by the General Assembly in March 1997 (the "Third

Plan") as unconstitutional, was filed July 3, 1996 and amended in October 1997.

9. In devising the Third Plan, the General Assembly used as its starting point the unconstitutional Second Plan of January 1992. In the Third Plan the boundaries of the Twelfth and First Districts are again predominantly motivated by race and cannot pass the strict scrutiny test.

10. The 1998 congressional elections are rapidly approaching and the filing period for the elections will close on February 2, 1998. Even though litigation challenging North Carolina's redistrict plans was first filed in March of 1992, the citizens of North Carolina face the possibility that they shall have to endure a fourth election and eight years of representation by persons elected in violation of the Constitution.

11. If injunctive relief is not granted by this Court, Plaintiffs will suffer irreparable injury of being represented by members of Congress elected under an unconstitutional plan which stigmatizes voters of all races.

12. In light of the recent history of the General Assembly's use of racial gerrymanders and their cosmetic attempt at remedying their unconstitutional Second Plan, Plaintiffs are likely to prevail on the merits.

WHEREFORE, Plaintiffs pray the Court:

1. That a preliminary injunction prohibiting congressional elections from taking place under the congressional redistricting plan enacted by the General Assembly in March 1997.

2. That Plaintiffs be granted such other relief as the Court deems appropriate.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

Civil Action No. 4.96-CV-104

MARTIN CROMARTIE, *et al.*,	)
Plaintiffs,	)
	)
vs.	)
	)
JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, *et al.*,	)
Defendants.	)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rules of Civil Procedure, Rule 56, Plaintiffs move for summary judgment and in support thereof they respectfully show the Court:

1. On June 13, 1996, the Supreme Court decided in *Shaw v. Hunt*, 116 S.Ct. 1894 (1996), that the North Carolina Congressional redistricting plan adopted in 1992 was an unconstitutional racial gerrymander and held that the five original plaintiffs in that action had standing to challenge the Twelfth District, where they resided, but had no standing to challenge the First District.

MOTION FOR SUMMARY JUDGMENT, CONTINUED . . .

2. A few days later, Plaintiffs Cromartie, Muse, and another Tarboro registered voter, instituted the present action which, attacked the First Congressional District, where they were registered voters.

3. Because the *Shaw* plaintiffs were seeking to have a new redistricting plan put into effect for the November 1996 election by the three-judge District Court in which that case was pending, the three original Plaintiffs in this action and agreed with the Defendants to enter into a consent decree which would stay proceedings in this action to await conclusion of the proceeding in *Shaw v. Hunt*.

4. In *Shaw*, the three-judge District Court declined to order that a new redistricting plan be put into effect for the November 1996 election, but did require the General Assembly to draw a new plan prior to April 1, 1997. Such a plan was ultimately enacted by the General Assembly late in March, 1997, and thereafter it was precleared by the Department of Justice and approved by the *Shaw* District Court.

5. Subsequently, the stay that had been entered by consent in this action was dissolved and an amended complaint was filed by Plaintiffs Cromartie and Muse, as registered voters in the "new" First District. They were joined as plaintiffs by four others who claim standing to attack the "new" Twelfth District.

MOTION FOR SUMMARY JUDGMENT, CONTINUED . . .

6. In their amended complaint, the Plaintiffs prayed that the Court declare unconstitutional the 1997 Congressional redistricting plan and enter an order which both temporarily and permanently would enjoin the conducting of elections according to the plan enacted by the General Assembly in 1997.

7. When first filed, this action was assigned to District Judge Malcolm Howard, but in January, 1998, a three-judge court was assigned to this case, pursuant to 28 U.S.C. Section 2284; and a motion for preliminary injunction has now been filed in the three-judge court to supplement the prayer for relief in the amended complaint.

8. Submitted herewith are the affidavits of Lee Mortimer, John Weatherly, Neil C. Williams, R.O. Everett and J.H. Froelich, Jr. As appears from these affidavits and from other evidence of which the Court may properly take judicial notice - such as maps of the current districting plan and of its predecessor plans - no dispute exists with respect to the material facts. These undisputed facts establish that the Congressional redistricting plan adopted by the North Carolina General Assembly in 1997 is itself a racial gerrymander and that both the Twelfth and First Districts under that plan have been drawn by the Legislature with a predominately racial motive and are tainted by being derived from the unconstitutional racially gerrymandered Twelfth and First Districts in the 1992 plan.

MOTION FOR SUMMARY JUDGMENT, CONTINUED . . .

9. The filing period for Congress, which commenced in early January, 1997, has already come to an end and there is urgency in obtaining a judicial determination as to the unconstitutionality of the current redistricting plan, and especially with respect to the racially gerrymandered Twelfth and First Districts, which have boundaries that are the result of a predominately racial purpose. In order to assure that the voters have a meaningful opportunity to vote for candidates of their choice in an election untainted by any racial gerrymander, it is imperative that the Court quickly determine the constitutionality of the present plan, and especially of the two districts where plaintiffs reside.

WHEREFORE, Plaintiffs respectfully move the Court to enter a summary judgment declaring that, in the 1992 redistricting plan, the First District - like the Twelfth - was an unconstitutional racial gerrymander, and also declaring that the Twelfth and First Congressional Districts under the 1997 plan are unconstitutionally gerrymandered; and enjoining the use of these districts and of the current redistricting plan in the 1998 Congressional election or in any future election.

MOTION FOR SUMMARY JUDGMENT, CONTINUED . . .

Respectfully submitted, this the 5th day of February, 1998.

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AFFIDAVIT OF LEE MORTIMER (WITHOUT ATTACHMENTS OR TABLES) (CD 34)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 04-CV-104-H2

Martin Cromartie et al.	)
	)
v.	)
	)
James B. Hunt, Jr. in his capacity as governor	)

AFFIDAVIT OF LEE MORTIMER

LEE MORTIMER, being duly sworn, deposes and declares the following:

I live at 4116 Livingstone Place in Durham, North Carolina, and have resided in Durham for nine years and in North Carolina for 40 years. I am currently employed as a technical writer in Research Triangle Park, but from 1974-1980, I worked as a newspaper and broadcast journalist at the *High Point Enterprise* and other news organizations. I have a degree in history with a minor in political science from Western Carolina University.

During and after my journalism career, I have maintained a keen interest in politics and the political process, particularly issues relating to voting and representation, and have studied

these issues extensively. I have written a number of articles on those subjects, which have been published in many North Carolina newspapers, including African-American newspapers and other publications such as *The Journal of Common Sense*, the *Independent Weekly*, *The Beacon*, and *The Prism*.

I was appointed by Senate President Pro-Tem Marc Basnight to serve during 1996 on the General Assembly's Election Laws Reform Committee. This committee of 14 legislators and public members studied and recommended a range of election-related proposals, some of which were enacted. I proposed legislation, which three study committees recommended, to authorize local governments to adopt proportional voting methods. The committee's co-chair, Sen. Wib Gulley, and another member, Sen. Leslie Winner, subsequently served on the General Assembly's Senate Select Committee for Congressional Redistricting.

In April 1994, I was interviewed on National Public Radio (NPR) about a proposal I had designed for North Carolina Congressional elections using proportional voting. That proposal was subsequently publicized in the *New York Times*, the *New Yorker*, *Congressional Quarterly*, and *USA Today*. The Institute of Bill of Rights Law of the Marshall-Wythe School of Law at the College of William and Mary asked to include one of my articles in its Supreme Court Preview conference for journalists and lawyers held September 22-23, 1995.

I was asked by the plaintiffs in *Shaw v. Hunt* to provide expert testimony about congressional redistricting and representation issues. I was deposed by counsel for the defense and the plaintiffs on November 29, 1993. Then, as now, I have neither requested nor received a fee for my testimony.

The Appendix outlines my additional qualifications to provide expert testimony on the Congressional redistricting process in North Carolina. It also includes a partial listing of my articles. Except as otherwise noted, the opinions in my analysis are based on official data from the 1997 Congressional redistricting plan *(maps shown in Exhibit A)*, or from voting returns reported by the North Carolina Board of Elections. My analysis and conclusions follow.

I. RACE STILL PREDOMINATES IN 12TH AND 1ST DISTRICTS

In late March 1997, the North Carolina General Assembly enacted a new Congressional redistricting plan *(see Exhibit A)* to replace the previous plan, which the U.S. Supreme Court ruled had used unconstitutional racial gerrymandering in creating the 12th District. The Court found that race was "the predominant consideration" in drawing the 12th District, and that the 12th District did not meet the test of "strict scrutiny."

Although the 1st District was not directly ruled on by the Supreme Court, its severe misshapenness was cited in the Court's majority opinion. That severe misshapenness, in my

opinion, indicates that race had predominated in determining the 1st District's boundaries. Sen. Roy Cooper, the chairman of the Senate Redistricting Committee, gave the same assessment in a meeting with Congressional incumbents — saying that if the former 1st District were challenged, it would be declared unconstitutional.[1]

Both districts were redrawn in the 1997 redistricting plan, but it is clear from their resemblance to the previous districts that the redrawn districts are the "fruit of the poisonous tree," and so, in my opinion, are irreparably tainted. I believe the new 12th District and 1st District would never have been drawn with their present boundaries — except for race.

New Twelfth District — The new district subordinates to race all traditional redistricting principles, such as compactness and respect for county and municipal boundaries. I can see no legitimate basis for the way disparate and geographically dispersed minority communities were grouped together. The new 12th District is, in my opinion, simply a makeover of the old unconstitutional district.

New First District — Like the old 1st District from which it derives, the new 1st District is not narrowly tailored to meet a compelling state interest. The number of counties that are divided and the failure to produce a more geographically compact district demonstrate to me that the purpose was to classify and over-concentrate voters on the basis of race.

II. 12TH DISTRICT'S SINGLE-MINDED FOCUS ON RACE

The new 12th District was reduced from 10 counties and three metropolitan areas — to six counties and two metropolitan areas. Though now shorter and wider, it could only be called "less bizarre" in appearance than its unconstitutional predecessor. Strictly speaking, the new 12th District is no longer a "minority-majority" district — 47 percent of its population is black and 48 percent is "minority." However, I am not aware that any specific percentage of minority residents has been designated as a benchmark for determining whether a district is a racial gerrymander. I believe it is the process used to reach a result — rather than the result itself — that indicates racial intent. In the case of the new 12th District, the state's own data show unmistakably that voters were identified, classified, and assigned by race.

In my opinion, three principal indicators reveal a racial methodology that subordinated all other considerations to race in redrawing the 12th District.

Voters assigned by race — The 12th District is made up of parts of six counties. In each county, the maximum number of blacks and the minimum number of whites were identified and assigned to the 12th District *(see Table 1)*. In Mecklenburg County, 84 percent of all blacks in the county, but only 27 percent of all whites, were placed in the 12th District; while only 16 percent of all blacks, but 73 percent of all whites in the

county, were placed in the 9th District. In Guilford County, 76 percent of all blacks, but only 25 percent of all whites, were placed in the 12th District; while 24 percent of all blacks, but 75 percent of all whites, were placed in the 6th District. In Forsyth County, 65 percent of all blacks, but only 8 percent of all whites, were placed in the 12th District; while 35 percent of all blacks, but 92 percent of all whites, were placed in the 5th District.

Table 1 — 12th District Voters Assigned by Race

County	*Race*	*12th District*	*Other District*
Mecklenburg	**Black**	**84%**	**16%**
(12th & 9th)	*White*	*27%*	*73%*
Guilford	**Black**	**76%**	**24%**
(12th & 6th)	*White*	*25%*	*75%*
Forsyth	**Black**	**65%**	**35%**
(12th & 5th)	*White*	*8%*	*92%*
Davidson	**Black**	**80%**	**20%**
(12th & 6th)	*White*	*49.6%*	*50.4%*
Rowan	**Black**	**66%**	**34%**
(12th & 6th)	*White*	*23%*	*77%*
Iredell	**Black**	**63%**	**37%**
(12th & 10th)	*White*	*37%*	*63%*

Source: 1997 Redistricting Plan

The three urban cores drew a combined population of 413,794 (75 percent of the district total), leaving 138,249 (25 percent of the total) to be drawn from the three corridor counties. In

Davidson County, 80 percent of blacks and 49.6 percent of whites were placed in the 12th District, while 20 percent of blacks and 50.4 percent of whites were placed in the 6th District. In Rowan County, 66 percent of blacks and 23 percent of the whites were placed in the 12th District, while 34 percent of blacks and 77 percent of whites were placed in the 6th District. In Iredell County, 63 percent of blacks and 37 percent of the whites were placed in the 12th District; while 37 percent of blacks and 63 percent of whites were placed in the 10th District.

Table 2—Intact vs. Divided Counties

District	**Counties**	**# Intact**	**% Intact**	**% Divided**
First	20	10	50%	50%
Second	9	5	55%	45%
Third	18	11	61%	39%
Fourth	5	2	40%	60%
Fifth	9	7	78%	22%
Sixth	7	2	29%	71%
Seventh	9	6	67%	33%
Eighth	10	8	80%	20%
Ninth	3	2	67%	33%

Tenth	11	10	91%	9%
Eleventh	15	15	100%	0
Twelfth	6	0	0	100%
11 dists.	—	—	65%	35%
12 dists.	—	—	60%	40%

Source: 1997 Redistricting Plan

No intact counties — According to news media reports and legislative statements, the General Assembly had as one major redistricting objective to keep counties and municipalities together.[2] Though totally disregarded in the 12th District, that objective was substantially followed in the other 11 districts *(see Table 2)*. Nine districts keep half or more of their counties intact. Two districts (4th and 6th) have some counties that are intact. Only the 12th District has no county, and none of its eight principal municipalities, which is not divided.

In my opinion, the only explanation why the state selectively disregarded its objective of maintaining intact counties and municipalities in the 12th District is that that objective undermined and conflicted with the predominate objective of maximizing the district's black population. The new 12th District follows and carries over the same methodology of the former 12th District — that is dividing all counties and municipalities in order to maximize its black population.

The 11 districts that include some undivided counties average 65 percent intact counties. The average for all 12 districts is 60 percent intact counties. Of North Carolina's 100 counties, 22 of them are divided. Sixteen of the 22 divided counties border either the 12th District or the 1st District. This reveals to me, again, that dividing counties is both a characteristic and a tool of race-based redistricting in North Carolina. In my opinion, the inclusion of some minimum number of intact counties in a district is an important test of whether that district is race-based. It appears to me that the reason the 12th District has no intact counties was because race was the predominant consideration.

Lacks common characteristics — The "common characteristics" test is a common-sense criteria, that I believe has been applied in redistricting cases, to determine whether race predominated in drawing a district. For example, if a district has a bizarre shape and contains no intact counties, it might allay suspicion if some other districts in the jurisdiction were also bizarrely shaped, or also lacked intact counties, or were both bizarre and lacked intact counties. The 12th District's bizarreness and lack of intact counties are shared by no other Congressional districts in North Carolina.

III. "METROPOLITAN DISTRICT" A SUBTERFUGE FOR RACE CONCENTRATION

Defenders of the 12th District have described it as a "metropolitan district" that "gathers like . . . metropolitan areas of Charlotte and the Triad." No geographic, economic, historic or demographic data exists to support the notion that Charlotte-Mecklenburg and the Triad counties of Forsyth and Guilford are one metropolitan area. Mecklenburg and Guilford counties have not shared the same Congressional district since 1792. Then, all of western North Carolina was in one district. Mecklenburg and the Triad counties are also defined by their separate newspaper circulation and broadcast service areas.

If the state had wanted to develop a bonafide "metropolitan district," two logical groupings would have been Forsyth and Guilford counties as one metropolitan district and Mecklenburg County as another. With 511,433 residents, Mecklenburg County has 93 percent of the population required for a Congressional district. It could have been supplemented with another 41,000 residents from suburban areas in any of five adjoining counties.

Guilford and Forsyth, the state's third and fifth most populous counties, have a combined population of 613,298 residents. The surplus 61,000 residents could have been logically transferred from outlying, semi-rural portions of either county and placed in the predominately rural and semi-rural 5th District that encompasses the state's northwestern region.

It is clear to me that the reason these options were not considered was because neither option would have produced a district that had more than about 29 percent minority population. However, by connecting two predominately African-American urban cores in separate metropolitan areas — and linking them through a predominately rural corridor — the resulting district was able to over-concentrate its minority population to 48 percent. In my opinion, the new 12th District is evidently a direct derivative of the old 12th District, in which racially drawn urban cores in different metropolitan areas were linked together through rural corridors.

IV. 1ST DISTRICT MAJORITY EXCEEDS VOTING RIGHTS MANDATE

Northeastern North Carolina has historically been home to the state's largest concentration of African-American residents. About a quarter million African-Americans live in the rural counties clustered near the state's northeastern border with Virginia. This is more blacks than live in any single metropolitan area of the state, including the Triad, Triangle, and Metrolina.[3]

History and demographics make northeastern North Carolina a logical location for a "minority-opportunity" district, where blacks make up a substantial portion of the district population. When the state passed its original post-census redistricting plan in early 1991, a minority-majority district was proposed for the northeastern region. Unlike the 12th District, a minority-

opportunity Congressional district in the state's northeastern region does have historical and demographic legitimacy.

However, the new 1st District over-concentrates a legitimate community of African-Americans into an artificial majority by excessively dividing counties. Half of the district's 20 counties were divided, generally on a racial basis, in order to give the 1st District a contrived black majority. The final Senate-House "compromise" plan had the most divided counties. Earlier versions divided fewer counties. In the initial House plan, five of 22 counties (23 percent) were divided.

The former 1st District covered 28 counties, and divided 19 of them. The new 1st District covers 20 counties, and divides 10 of them. Formerly 57 percent black and 58 percent minority, the 1st District is now 50.27 percent black and 51.38 percent minority. The divided counties generally follow the same pattern as the 12th District, with the maximum number of blacks and the minimum number of whites being assigned to the race-based district. Thus, the districts are not narrowly tailored to meet a legitimate state objective.

V. WHITE VOTES CEMENT CLAYTON'S OVERWHELMING ADVANTAGE

Rep. Eva Clayton was elected to Congress from the 1st District with 68 percent of the vote in 1992; 61 percent in 1994; and 67 percent in 1996 — an average of 66 percent over three general elections. This high re-election margin can be attributed to

Clayton's receiving 90 percent or more of the district's black vote and a substantial share of the white vote. A recent *News and Observer* report estimated Clayton's white support during those three general elections to be about 25 percent.[4] Analysis of Clayton's 66-percent margins indicates her white support could be higher *(see calculation below)*.

52%** (black voters) x **100%** (voted for Clayton) = **52%
48%** (white voters) x **29%** (voted for Clayton) = **14%
***52% + 14% = 66%** (Clayton re-election average)*

If black participation in her 57-percent district were 52 percent (reflecting a lower black voting-age population), and if Clayton received 100 percent of that vote, she would have received 29 percent of the white vote. If Clayton's black support were less than 100 percent, or if black participation were lower than 52 percent, her white support could have been higher.

When minority-majority districts were instituted, it was assumed that a 55-65 percent black population was needed to overcome white bloc voting and consequent defeat of the minority-preferred candidate. Since some white voters do, in fact, vote for the minority candidate, the 1st District's 57 percent black population — supplemented by white votes — has translated to an assured and overwhelming victory for the minority Congressional candidate.

Even in the reduced, 50.3-percent-black 1st District, the minority candidate has an excessive advantage. In the 20 counties of the

new 1st District, the 1996 results for President, U.S. House, and U.S. Senate confirm a continuing, overwhelming advantage for the minority candidate: Bill Clinton received 61 percent of the two-party vote; Democratic House candidates (Clayton, Neil Cashion, Bob Etheridge, George Parrott) received 61 percent; and Harvey Gantt received 56 percent.[5]

While Rep. Clayton, as the incumbent, could expect a higher level of support, I believe Harvey Gantt's 56-percent vote in his 1996 race against Sen.Jesse Helms represents the core-level support available to a non-incumbent black challenger facing a white incumbent. Rep. Clayton confirmed the importance of the Gantt vote in redrawing her district during a talk to a UNC audience two days before the redistricting plan was finalized.

According to a newspaper account, Clayton cited "inside information" based on "voting patterns in Gantt's U.S.Senate race" that showed the new 1st District would "enjoy a 56-percent majority of sympathetic . . . former Gantt supporters" *(see Exhibit B)*.

VI. WINNERS AND LOSERS DECIDED ON THE BASIS OF RACE

The Voting Rights Act (VRA) requires that elections be "equally open" to racial minorities — and that minorities not have "less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice."

However, by creating an artificially contrived black majority, the state has gone well beyond what the VRA authorizes in assuring "equal opportunity." The result is assured victory for minority voters and the minority-preferred candidate and assured defeat for other voters and candidates.

Facing a built-in 12-point minimum deficit, Rep. Clayton's general election opponents have no more opportunity of being elected than they did in the previous 1st District. Thus, the state, using divided counties as a tool of race-based redistricting, has given minority voters in the 1st District — not just an "equal opportunity" to win — but a virtual certainty of winning.

When the state intervenes to grant one group of voters more than a 50-percent probability of electing its candidate of choice, that denies to all other voters and candidates an equal opportunity to participate. A state-imposed 56-percent core-level advantage for the minority-preferred candidate cannot be considered "equal opportunity participation."

In my opinion, redistricting intended to assure victory to some and consequent defeat to others — on the basis of race — exceeds the Voting Rights Act mandate and is a denial of equal protection of the laws under the 14th Amendment to the U.S. Constitution.

VII. "EQUAL OPPORTUNITY" QUANTIFIABLE IN NORTH CAROLINA

If "equal electoral opportunity" can be accepted as being somewhere close to a 50-percent probability of winning, the level of black voting-age population (BVAP) needed to achieve "equal electoral opportunity" for minority Congressional candidates has been quantified in recent research by Columbia University political scientists Charles Cameron, David Epstein, and Sharyn O'Halloran. Their research appeared in an article entitled "Do Majority-Minority Districts Maximize Black Representation in Congress?" *American Political Science Review* (December 1996).

The researchers used a "multinomial logit" statistical methodology to estimate the level of BVAP in Southern states needed "to achieve a 50 percent probability that the elected representative is a black Democrat, that is, *the point of equal opportunity for minority voters to elect their candidate of choice."* The researchers conclude: "In the South, the required level of BVAP (for equal opportunity) is 40.3 percent . . . given present turnout" *(see Exhibit C).*

To determine how the Cameron research might apply to North Carolina, I identified a group of 17 intact counties in northeastern North Carolina whose combined population equals a congressional district. The subject area is nearly identical to one in a redistricting proposal published by the *Charlotte Observer* that reporter Jim Morrill and legislative staff member Dan Frey worked together to compile *(see Exhibit D).*

This 17-county area has a population of 553,068; a black population of 44 percent; and an overall minority population of 45 percent. The area's BVAP is 40.6 percent,[6] almost identical to the 40.3 percent of BVAP listed in the research. Results of the 1996 elections in the subject area were: Clinton, 57 percent (two-party vote); U.S. House candidates (Clayton, Cashion, Etheridge, Parrott), 59 percent; and Harvey Gantt, 50.9 percent.

VIII. 1ST DISTRICT SIX PERCENTAGE POINTS "OVER-CONCENTRATED"

If Gantt's 51-percent vote represents the core-level support available to a non-incumbent black candidate facing a white opponent, there would be a strong correlation between the Cameron research and voting patterns in northeastern North Carolina. In other words, Cameron's 40.3 percent BVAP closely approximates the appropriate level of BVAP for providing minority voters in northeastern North Carolina a 50-percent probability — thus an "equal opportunity" — to elect their Congressional candidate of choice.

As the incumbent, and based on her past performance in the 17-county area where she was on a large percentage of the ballots, Rep. Clayton, in my opinion, would likely exceed 51 percent of the vote. However, in a scenario where a "generic" black candidate has the same core-level support as Gantt, but may have less white (and black) support than Clayton, I believe 40-percent BVAP would position that candidate to be fully competitive with

a white opponent: *(Scenario assumes participation to be 40 percent black and 60 percent white)*

40%** (black voters) x **90%** (support for black candidate) = **36%
60%** (white voters) x **25%** (support for black candidate) = **15%
***36% + 15% = 51%** (minority electoral opportunity)*

Thus, with 50 percent black population and 46.5 percent BVAP, the redrawn 1st District is approximately six percentage points "over-concentrated" beyond the point of "equal electoral opportunity" for all voters and candidates.

IX. VOTING RIGHTS NOT A MANDATE FOR "SAFE SEATS"

As I understand the Voting Rights Act, its purpose is not to provide "safe minority seats" — but to assure that minority voters have the *same opportunity* as other voters to participate in the election process. As presently constituted, North Carolina's race-based 1st District fails to provide the same opportunity for all voters to elect their representatives of choice. For those reasons, I am convinced the 1st Congressional District is a misinterpretation and abuse of the Voting Rights Act and that it violates the 14thAmendment to the U.S. Constitution.

"Over-concentration" and "assured victory" are even more pronounced problems in the 12th District. By the state's estimate in the redistricting plan. the new 12th District is composed of 66 percent former Harvey Gantt supporters. In my opinion, this rules out any opportunity for meaningful participation by other voters

and candidates. Though these violations certainly apply, they are, in my opinion, overshadowed by the 12th District's racial classifications, racial assignments, and overall non-legitimacy as a district.

In vivid contrast to the race-based 1st and 12th districts, a legitimate "minority-opportunity"district has existed in both the 1992 and the 1997 redistricting plans. That district is the 4th District in the Triangle area. In both the 1992 and 1997 plans, the 4th District did not resort to bizarre shapes and showed no indication that race was the predominant factor. Yet in both plans, Harvey Gantt won a convincing 59 percent of the district's vote. While it is impossible to draw two non-race-based black-majority districts, the evidence shows it is possible to have at least two "minority-opportunity"districts — one in the northeast and one in the Triangle.

X. WHITE CROSS-OVER VOTING ENHANCES MINORITY OPPORTUNITY

If Gantt's 1996 vote is the measure, black candidates, helped by white cross-over voting, have electoral opportunities in additional areas of the state *(see Exhibit E)*. The following examples show the possibility for drawing non-race-based minority-opportunity Congressional districts that are geographically compact and maximize intact counties.

Metrolina area — Gantt won 55 percent of the vote against Helms in Mecklenburg County, which has 93 percent of the

population for a Congressional district. With a respectable showing in the remaining 7-percent population area outside of Mecklenburg County, Gantt would have been solidly positioned in a "Metrolina district."

Triad area — The combined Guilford-Forsyth County vote was 51-49 percent for Helms. In a Guilford-Forsyth "Triad District," 61,000 people would be removed to achieve population equivalence. In either county, the outlying areas most likely to be removed are predominately rural and semi-rural. Since those type areas are more heavily populated with conservative voters, their removal would likely have pulled Gantt even with, or slightly ahead of, Helms in a "Triad District."

Southeastern area — The state's other high concentration of racial minorities is found in the southeastern region. A Congressional district anchored by Cumberland and Robeson counties and extending along the South Carolina border would be 44 percent minority. Such a grouping would provide a second predominately rural district and a strong electoral opportunity for a minority candidate. For example, in seven southeastern counties — Bladen, Brunswick, Columbus, Cumberland, Hoke, Robeson, and Scotland — Gantt was favored by 53.7 percent of voters over Helms.

The Gantt results in the state's major metropolitan areas — Metrolina, the Triad, and the Triangle—confirm the significant level of white cross-over voting that occurs in urban areas. The

BVAP in these urban counties is generally under 25 percent, which means whites were crossing over at rates of 40-50 percent to vote for Gantt.

The relatively high levels of white cross-over voting in the urban counties refute the state's claim that electoral opportunities for black candidates can only be provided by over-concentrating minorities into an artificial district extending across separate metropolitan areas. The level of cross-over voting also suggests that in urban areas of the South, the *"point of equal opportunity for minority voters to elect their candidate of choice"* is considerably lower than the 40.3-percent BVAP in the Cameron research.

The southeastern border area contains perhaps the most diverse group of voters in North Carolina. Non-blacks — including Native Americans, Hispanics, and Asians — account for about one-quarter of the area's 44-percent minority population. Despite claims that black and Native American voters are not politically cohesive, Gantt's 54-percent vote in this 7-county area shows that a diverse coalition of minority voters, plus white cross-over voters, can be sustained to provide strong electoral opportunities for a minority candidate in a rural area of North Carolina.

XI. CONCLUSION

Three Congressional elections have now been held under an unconstitutional redistricting plan. In drawing a remedial plan,

the General Assembly looked only to a previously invalidated plan as a starting point and ignored other possible plans. In my opinion, this shows the state is intending to perpetuate a racially gerrymandered redistricting plan.

Elected officials face an inherent conflict of interest any time they draw districts — for themselves or for other elected officials. This has never been more evident than in the General Assembly's repeated drawing of districts that classify and separate voters by race. Fortunately, other alternatives exist.

For example, some states have minimized the partisan effects of redistricting by turning over the task to non-partisan, independent redistricting commissions. The courts themselves have resolved disputes over redistricting by drawing the districts or by appointing "special masters" to do the redistricting.

Though not currently authorized by statute for Congressional elections, multimember districts and proportional voting methods would be another means of assuring fair representation for racial minorities. A proportional voting system would most likely put an end to all forms of gerrymandering by removing the incentive to manipulate district lines.

If allowed to stand, this redistricting plan, and the 12th District in particular, could undermine the election process into the next decade and century. Gerrymandering in this redistricting plan is moving us toward a quasi-appointed Congress, whose members

receive their "appointments" from legislative redistricting committees.

The "anything goes" philosophy, in which county and municipal boundaries are utterly disregarded, could give rise to drawing districts that serve only the self-interested ends of the people who draw them. An essential step in restoring public confidence in the election process is to restore integrity to the redistricting process.

/s/ Lee Mortimer
Affiant

State of North Carolina
County of Durham

Sworn to and subscribed before me this 26th day of January, 1998

/s/ Anita Robinson
Notary

(Official Seal)
Notary Public

My commission expires 10/28/2002

NOTES

1. "Democrats express redistricting reservations," Associated Press, Feb.25,1996.

2. "Legislators loath to split counties when redistricting," Associated Press, Dec. 29, 1996. Cover page of initial Senate redistricting plan (February 1997) made several references to priority for intact counties.

3. Source: U.S. Census Bureau

4. "Clayton to seek re-election," *News and Observer*, Nov. 1, 1997

5. This analysis of Presidential, U.S. Senate, and U.S. House results is based on returns from the 10 intact counties of the new 1st District as reported on the State Board of Elections Internet site. Additionally, the Board of Elections provided me 1996 precinct-level results for the 10 divided counties assigned to the new 1stDistrict. Most precinct names correlated with precincts listed in the state's redistricting plan. The only county for which precincts were difficult to correlate was Beaufort, which accounts for about four percent of the district's population. Any discrepancy in my reading of the figures would change the analysis by no more than one to two percentage points.

6. Source: U.S. Census Bureau

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
Eastern Division
Civil Action No. 040-CV- 104-H2

MARTIN CROMARTIE, *et al.*	)
	)
v.	)
	)
JAMES B. HUNT, JR., in his capacity as governor, *et al.*	)

AFFIDAVIT OF JOHN WEATHERLY

John Weatherly, being duly sworn, declares and says as follows:

I am a citizen and resident of Cleveland County, North Carolina, and I am now serving in the North Carolina House of Representatives as the representative from the 48th House District which includes Cleveland County. Previously I served as a Representative in the 1989, 1993 and 1995 sessions. Currently I am Chair of the House State Government and Properties Committee and am a member of the Environmental Committee, the Agricultural Committee, and the House Appropriations Committee. During my service in the House of Representatives, I have become increasingly concerned about the need for reform in the electoral process and, because of my interest in this issue, I served in the fall of 1996 as one of the

fifteen members of the General Assembly's Election Law Reform Committee.

During my service in the General Assembly, I have become aware of the extensive gerrymandering that has taken place in the creation of districts for electing members of Congress and of the General Assembly. The existence of this gerrymandering is apparent from an examination of the maps that show the redistricting and reapportionment plans that were enacted during the 1991 Session of the General Assembly and the redistricting plan that was enacted in March of 1997. Because of the flagrant gerrymandering that has taken place, I proposed a constitutional amendment that would place the responsibility for congressional redistricting and legislative reapportionment in a non-partisan commission. This commission would draw, electoral districts in a manner that disregarded race, political party and incumbency, and relied instead on traditional redistricting principles, such as Geographical compactness, contiguousness, political subdivisions, and real communities of interest.

Early in its 1997 session, the General Assembly was considering the preparation of a redistricting plan to replace the plan enacted in 1992, which the Supreme Court had declared unconstitutional in June 1996. As a means of preparing a constitutional plan, I suggested that the General Assembly created a redistricting commission along the lines of my proposed constitutional amendment. In this connection, I

introduced a bill that would have directed the creation of a redistricting commission to prepare a congressional redistricting plan for use in the 1998 elections. This bill, if enacted, would have provided a means for drawing a race-neutral and party-neutral redistricting plan that would replace the plan which the Supreme Court had declared unconstitutional in *Shaw v. Hunt*. This new plan would have been submitted for a vote, up or down, in the General Assembly. By use of the redistricting commission, the General Assembly would have eliminated any taint or carry-over from the redistricting plan that was ruled unconstitutional by the Supreme Court.

Although I was not serving in the General Assembly in 1991-92 when the congressional redistricting plan was prepared for use in the 1992 and subsequent elections, I readily concluded that race had predominated in the drafting of that plan - especially with respect to the First and Twelfth Districts. Indeed, this was apparent even from the shape of the districts, when considered in relation to concentrations of African-American population in North Carolina. I am especially aware of the racial gerrymandering of the Twelfth District in the 1992 plan because I reside in the adjacent Ninth congressional district, whose shape was significantly affected by the racial gerrymandering of the Twelfth District.

The appearance of the First and Twelfth Districts in the current plan, which was enacted by the General Assembly in

March of 1997, does not reveal the racial motive as readily as did the appearance of the corresponding districts in the 1992 plan. In other words, the new districts are somewhat less "bizarre." However, as I confirmed by examining recently a map of the current districts, race was still a predominant motive in their creation. This is especially obvious to me with respect to the current Twelfth District; a comparison of the boundaries of the Twelfth District with the concentrations of the African-American population in the six counties of which portions are included in the Twelfth District makes evident to me that race predominated in the drawing of that district. Not only the redistricting plan itself, but the events that occurred during the 1997 session of the General Assembly lead me to conclude that race predominated in determining the boundaries of the First and Twelfth Districts. Basically, the premise for the current plan was that two congressional districts should be created in each of which an African-American would be elected to Congress. Indeed, the premise was even more specific - namely, that the election of the two current African-American incumbents would be assured. Subordinate to this objective was the re-election of other incumbents along party lines to maintain the 6-6 party balance in the congressional delegation; but it is clear to me that the indispensable part of the plan was to assure the creation of two districts that would re-elect the black incumbents.

From my knowledge of North Carolina and its politics, including the politics of the General Assembly, I am convinced

that the predominate motive - indeed, almost the only conceivable motive - for linking together Mecklenburg County with Guilford and Forsyth Counties in a single congressional district was the racial motive of guaranteeing the election of an African-American. Although I am not as familiar with the area encompassed in the current First District, I believe the same conclusion applies to it. In each instance my conclusions are based on statements made on or off the floor of the General Assembly or in Committee, on the final results of the redistricting process, and on my experience as a legislator.

Further declarant sayeth not.

/s/ John Weatherly

Subscribed and sworn to before me
this 22nd day of January, 1998.

/s/ Beverly Adams
Notary Public

My commission expires 1/24/2000

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AFFIDAVIT OF J. H. FROELICH, JR. (CD 34)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 4.96-CV-104

MARTIN CROMARTIE, *et al.*, Plaintiffs,	)
vs.	)
JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, *et al.* Defendants.	)

AFFIDAVIT OF J.H. FROELICH, JR.

J.H. Froelich, Jr., being duly sworn, declares and says:

I am a citizen and resident of High Point, North Carolina which is in Guilford County. I have lived here all my life; and I am currently in my sixties. I have been involved in the import and export of furniture and materials intended for use in making furniture. and I have also participated in a variety of other business activities. In addition, I have been active in politics at the local and state level, and in 1972 managed statewide the gubernatorial campaign of the Democratic nominee, "Skipper" Bowles. I am a plaintiff in this action; and I provided an affidavit as a witness for the plaintiffs in the trial of *Shaw v. Hunt*.

AFFIDAVIT OF J. H. FROELICH, JR., CONTINUED . . .

When the Congressional redistricting plan was enacted in 1992, I believed that the plan was unconstitutional because of the strange way in which the districts had been drawn. There seemed to be no relation between the drafting of district boundaries and the application of traditional race-neutral redistricting principles. Because of the bizarre way in which the Congressional districts had been drawn – sometimes with precincts being split among two or more Congressional districts – it was hard for a voter to know in what district he had been placed. Indeed, when I went to vote in 1992, I did not realize that I was in the Twelfth District. After the 1992 plan was declared unconstitutional, the General Assembly in 1996 produced a new plan. However, that plan represents little improvement upon the earlier plan – at least, with respect to the area of the state in which I live. Clearly race – just as for the 1992 plan – predominated in the drawing of the Twelfth District, which bisects Guilford County. Apart from a racial motive, I find it hard to believe that anyone in North Carolina could justify putting Mecklenburg County in the same district with any part of Guilford County. Indeed, all of Mecklenburg County would be placed in a single district if traditional race-neutral principles of redistricting were involved: likewise, all of Guilford would be in the same district.

AFFIDAVIT OF J. H. FROELICH, JR., CONTINUED . . .

Further declarant sayeth not.

/s/ J.H. Froelich, Jr.

NORTH CAROLINA
GUILFORD COUNTY

Subscribed and sworn to before me
this 2nd day of February, 1998.

/s/ Linda L. Willard
Notary Public

My Commission expires: 11-5-00

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AFFIDAVIT OF R. O. EVERETT (CD 34)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 4.96-CV-104

MARTIN CROMARTIE, *et al.*,
Plaintiffs,

vs.

JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, *et al.*
Defendants.

AFFIDAVIT OF R.O. EVERETT

R.O. Everett, being duly sworn, declares and says as follows:

I am a citizen and resident of Salisbury, North Carolina, which is located in Rowan County; and I have resided here for more than three decades. For many years I was the city executive for Wachovia bank here in Rowan County. Over the years my wife and I have participated actively in politics in Rowan County. A few years ago, I ran unsuccessfully to serve in the North Carolina House of Representatives. I am one of the Plaintiffs in this case because I am convinced that the

present redistricting plan is racially gerrymandered and that this is unhealthy for the electoral process in North Carolina.

Although I have lived in other parts of the State earlier in my life, I am especially familiar with Rowan County and its neighboring counties. Because of that familiarity, it was easy for me to perceive that in the 1992 Congressional redistricting plan the Twelfth District, which cut through Rowan County had a shape which was predominately motivated by race. After the original Twelfth District had been declared unconstitutional, I had hoped that in any new plan the districts of the state would be drawn without regard to race. Unfortunately, this did not occur. Under the present plan, the Twelfth District is still racially gerrymandered – that is, its shape is motivated predominately by race – and this has a corresponding effect on the boundaries of the adjacent districts. With specific reference to Rowan County, I am convinced that had race-neutral principles been followed, such as compactness, contiguousness, and respect for the boundaries of political subdivisions, the district boundaries would have been quite different. Indeed, Rowan County would probably not have been included at all in the Twelfth District. In view of the size and location of Mecklenburg County, it seems obvious to me that no part of Rowan would have been placed in the same district with Mecklenburg if race-neutral districts had been drawn by the General Assembly.

Further declarant sayeth not.

/s/ R.O. Everett

NORTH CAROLINA
ROWAN COUNTY

Subscribed and sworn to before me
this 30th day of January, 1998.

/s/ Jo Ann L. Foster
Notary Public

My Commission expires: 1-16-2002

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4-96-CV-104-BO(3)

MARTIN CROMARTIE, THOMAS CHANDLER MUSE, and GLENNES DODGE WEEKS,	)
Plaintiffs,	)
v.	)
JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, et al.,	)
Defendants.	)

DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants, pursuant to Rule 56(b) of the Rules of Civil Procedure, respectfully move the court to enter summary judgment for them on all claims made by plaintiffs. In support of this motion, defendants rely upon the following documents, all of which have been filed contemporaneously with this motion:

1. Defendants Brief In Opposition to Plaintiffs' Motion for Summary Judgment and in Support of their Cross-Motion for Summary Judgment.

2. The Affidavit of Gary O. Bartlett, Executive Secretary-Director of the State Board of Elections.

3. The Affidavit of Senator Roy A. Cooper, III.

4. The Affidavit of Representative W. Edwin M°Mahan.

5. The Affidavit of Dr. David R. Goldfield.

6. The Affidavit of Dr. David W. Peterson.

7. The Affidavit of Dr. Alfred W. Stuart.

8. The Affidavit of Dr. Gerald R. Webster.

WHEREFORE, defendants respectfully request the Court (1) to enter summary judgment for them. (2) to deny plaintiffs' motion for summary judgment. (3) to dismiss this action and (4) to allow them such other relief as may be just and proper.

This the 2nd day of March, 1998.

MICHAEL F. EASLEY
ATTORNEY GENERAL

/s/ Edwin M. Speas, Jr.
Senior Deputy Attorney General
N.C. State Bar No. 4112

/s/ Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119

/s/ Norma S. Harrell
Special Deputy Attorney General
N.C. State Bar No. 6654

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¶97C-27R. Other Material Concerning the Purpose of the Plan

Nearly 200 congressional redistricting plans have been drawn by legislative staff, interest groups, and the public using the North Carolina General Assembly's redistricting computers since January 1, 1996. There were a few exploratory plans drawn by the legislative staff in the fall of 1995 after the United States Supreme Court overturned Georgia's congressional redistricting plan. Some plans were never completed and some are duplicates of others. Plans that were actually presented during the legislative process as alternatives are discussed below and most are also discussed in ¶97-27H:

1. Plans Publicly released by the House and/or Senate

(a) Congress-96-001: This plan was released by Representative Richard Morgan to the House Rules Committee in July, 1996. The plan was never voted on by the Committee. *See* ¶97C-27H and Attachment 97C-27R-1. The plan contained a district from Charlotte to Robeson County similar to the district contained in the plan offered by Senator Betsy Cochrane as an amendment to 1997 Congressional Plan A and to the plan eventually enacted. (*See* Attachment 97C-27R- 11 for the plan proposed by Senator Cochrane). Representative Morgan's primary goal in releasing the plan at that time was to establish that a redistricting plan could be drawn in time for the 1996 elections. That plan was never considered by the General Assembly after the public hearing.

¶ 97C-27R., CONTINUED . . .

(b) 1997 Congressional Plan A: This was the first plan released by Senator Cooper to the Senate Select Committee on Redistricting on February 20, 1997. The plan was approved by the Committee on March 19, 1997 as Senate Bill 433, but was withheld from a vote on the Senate floor as negotiations between the House and Senate continued on a compromise plan. This plan is contained in 3 different forms in Attachment 97C-27R-2: as released on February 20; as re-released on February 24 with a contingent zero-deviation plan; and as released again on March 18 as Senate Bill 433.

(c) 1997 House Congressional Plan A.I: This was the first plan released by Representative McMahan to the House Committee on Congressional Redistricting. It was presented at the February 25, 1997 meeting, of the committee. The plan was never voted on by the committee. *See* Attachment 97C-27R-3.

(d) 97 House Congress Plan G: This plan was submitted to the House Committee on Congressional Redistricting on March 19, 1997. The Committee approved it and had it introduced as a committee bill (House Bill 586). The bill was sent back to Committee. (*See* Attachment 97C-27R-4).

(e) 97 HOUSE/SENATE PLAN: This plan represented the plan agreed to by the House and the Senate. The plan was approved by the House Committee on Congressional Redistricting on March 25, 1997. The plan was amended on

¶ 97C-27R., CONTINUED . . .

the floor of the House by Rep. Ronnie Sutton, and the amended version was sent to the Senate as 97 HOUSE/SENATE PLAN A. *See* ¶97C-27H for a discussion of the Sutton amendment. *See* Attachment 97C-27R-5 for this plan.

2. House Committee Amendments

(a) Blue Amendment: Representative Dan Blue offered an amendment that was destined primarily to preserve the 4th district essentially in its 1992 form instead of having it divided between the 2nd and 4th district. The amendment was rejected. *See* Attachment 97C-27R-6.

(b) Sutton amendment: Representative Ronnie Sutton of Robeson County offered an amendment to shift a predominantly Native American precinct in Robeson County from District 8 back to District 7 and to "make up the population difference" in Cumberland County. Representative Sutton did not identify which precincts in Cumberland County should be moved to account for this change. Counsel to the Committee suggested that he make this change as a floor amendment to the bill so that the appropriate precincts could be identified and the population data recalculated on the computer. For purposes of the proposed back-up plan containing zero population deviation (97 HOUSE/SENATE PLAN 0), census blocks within a precinct would also have to be identified and moved and the population figures recalculated to ensure that there was still zero population deviation in Districts 7 and 8.

¶ 97C-27R., CONTINUED . . .

Representative Sutton's amendment was defeated in committee. (Note: Representative Sutton offered an amendment on the floor the following day, complete with a statistical analysis. *See* below).

3. House Floor Amendments

(a) Representative Sutton offered an amendment on second reading of the bill, complete with statistical analysis, to both the primary plan and the alternate zero deviation plan. His amendment moved a predominantly Native American precinct from District 8 to District 7, moved Fort Bragg from District 7 to District 8, and changed western Cumberland County and western Fayetteville to offset the population difference in District 7 created by the transfer of Fort Bragg. This amendment passed 117-0. *See* Attachment 97C-27R-7. The recorded vote is attached as Attachment 97C-28F-4H.

(b) Representative Mickey Michaux offered the following three related amendments to House Bill 586 on second reading of the bill:

(1) Fitch/Michaux Plan A *(See* Attachment 97C-27R-8)

(2) Fitch/Michaux Plan B *(See* Attachment 97C-27R-9)

¶ 97C-27R., CONTINUED . . .

(3) Fitch/Michaux Plan C *(See* Attachment 97C-27R-10)

Representative Michaux announced that the purpose of his amendments was to maximize the minority vote by creating more minority influence districts. *See* House floor debate, Attachment 97C-28F-4F(1), pp. 9-10.

Each of these amendments contained a northeastern majority-minority district (District 1) comparable to the proposed District I in House Bill 586. The percentage of African-American population (total population) of District I in all three Fitch/Michaux plans was 50.23%. (It is 50.27% in the enacted plan). Each of the amendments also contained a new District 5 running from Durham to Greensboro and a District 12 running from Charlotte to Winston-Salem. In Plan A, District 5 runs from Granville County through Durham into Greensboro. In Plans B and C, District 5 runs from Durham to Greensboro and then to High Point. The amendments also had variations in District 7. In Plan B, Robeson County is in District 8. In Plan C, Robeson County is in District 7.

The percentage of African American and Native American population, based on 1990 census data, for Districts 1, 5, 7, and 12 in the Fitch/Michaux Plans were as follows. (Note: for District 7, the first number is African American population percentage; the second number is Native American population

¶ 97C-27R., CONTINUED . . .

percentage. For the other districts, the number is African American population percentage):

	District 1	District 5	District 7	District 12
Plan A:	50.23	33.88	29.62/8.61	37.44
Plan B:	50.23	34.41	32.17/1.39	37.66
Plan C:	50.23	34.41	30.02/8.55	37.66

All three amendments were voted on in the House and defeated by the following margins: Plan A (90 to 27); Plan B (90 to 26); Plan C (87 to 30). The recorded votes on these amendments are attached as Attachment 97C-28F-4H.

Representative Michaux's amendments were rejected because they did not preserve the partisan balance in House Bill 586 nor did they preserve the cores of the existing districts in the Piedmont. Plan B would have placed two Democratic incumbents in the same district: Congressman McIntyre from Robeson County and Congressman Hefner from Cabarrus County. All three plans (A, B, and C) would have placed two Republican incumbents together in District 6: Congressman Burr and Congressman Coble.

In addition, all three plans would seriously weaken the ability of the African-American incumbent in District 12 (Congressman Watt) to win re-election. The African-American

¶ 97C-27R., CONTINUED . . .

percentage in District 12 is only 37.66 percent in Plans B and C and 37.44 percent in Plan A --- approximately nine percent lower than the African-American percentage of District 12 in the enacted plan (46.67%).

The three Fitch/Michaux plans also reduce the percentage of African Americans in Districts 2, 3, 4 and 8 as compared to the enacted plan. as shown below:

	Dist. 2	Dist. 3	Dist. 4	Dist. 8
Enacted plan	27.91	19.79	21.02	27.73
Fitch/ Michaux A	23.62	18.82	19.55	18.62
Fitch/ Michaux B	23.71	16.77	18.93	20.90*
Fitch/ Michaux C	23.71	16.77	18.93	23.06

*This plan (B) also includes a Native American population of 8.64% in District 8.

4. Plans Offered in Senate Committee

Senator Betsy Cochrane offered an alternative plan. Cochrane Congress (Attachment 97C-27R-11), at the March 19, 1997 meeting of the Senate Committee. This plan was

offered as an alternative to the plan offered by Senator Cooper (1997 Congressional Plan A). Senator Cochrane's plan was rejected by the Committee. *See* the minutes from the Senate Committee meeting for that day in Attachment 97C-28F-4D(3) and ¶97C-27N for extensive discussion on Senator Cochrane's plan and why it was not accepted.

5. Plans Offered on Senate Floor

Senator Cochrane offered her plan again. *See* the discussion above. The plan was defeated by a vote of 27 to 18. *See* Attachment 97C-28F-4H for the recorded vote on the amendment.

6. Plans Discussed in Negotiations

Senator Cooper and Representative McMahan were involved in negotiations with each other for nearly three weeks in an effort to develop a plan that both the House and the Senate could agree to. These negotiations centered primarily on the division of Wake County between the 2nd and 4th districts.

Several proposed plans were exchanged during this time. The plans constituted a series of offers and counteroffers that gradually moved the Senate and House closer together. This series of changes can best be understood in light of the original plans released by both sides (1997Congressional Plan A in the

Senate and 1997 House Congressional Plan A.1 in the House) and how those plans came about.

In developing the Senate's initial plan as well as subsequent plans, Senator Cooper consulted with members of the congressional delegation and members of the Senate, particularly Senator Frank Ballance, Senator Leslie Winner, Senator Bill Martin, and Senator Marc Basnight. Senator Ballance, an African-American and the Deputy President Pro Tempore of the Senate, was consulted about placement of counties in the northeastern part of the state -- the area in which he resides (Warren County)--including the location of the boundaries of the new lst district. Senator Winner, counsel for the plaintiffs in the *Gingles* litigation in the early 1980s and a resident of Charlotte, was consulted about the composition of the 12th district, which includes much of Charlotte. Senator Martin, an African-American representing, much of Greensboro and Guilford County, was consulted both as to statewide plan issues and the placement of parts of High Point and Greensboro in the 12th district. Senator Basnight, President Pro Tempore of the Senate, was consulted on the plan generally and on the placement of counties in the northeast. Senator Basnight also resides in the northeast (Dare County). Senators Basnight and Ballance together represent most of northeastern North Carolina.

The initial Senate plan was perceived by many Republicans as treating incumbent Republican congressman Walter Jones

(3rd District) unfairly (*see*, for example, the comments of Representative McMahan to the House Redistricting Committee on February 25, 1997 at Attachment 97C-28F-4E(2)). The House Republicans felt that the 3rd district was perhaps their most critical district and that the Senate's proposal, especially in the 3rd district, threatened the 6-6 partisan balance. Rep. McMahan responded by releasing a plan (1997 House Congressional Plan A.1) that in many respects resembled the Senate plan. However, Rep. McMahan's plan also addressed the concerns about the 3rd district and created other intentional differences between the two plans to use as "bargaining chips" in negotiating primarily on three districts -- the 2nd, the 3rd, and the 4th. Representative McMahan also consulted with numerous individuals, including African-American and other members of the House and Democratic and Republican members of the North Carolina congressional delegation.

Although the boundaries of the 1st District were affected by changes in the 2nd, 3rd, and 4th districts, these changes did not significantly affect the percentage of African-Americans in the 1st District. This percentage fluctuated about two-tenths of one percent as a result of this series of changes. The enacted 1st district is similar to the 1st district that was originallv proposed by Senator Cooper after consultation with Senators Ballance and Basnight. As enacted it includes moreof the territory of the existing lst district than the original House plan, thus keeping more of Congresswoman Clayton's current constituency intact

in the district. At the same time, the counties in the coastal/Tidewater region (Chowan, Pasquotank, Perquimans, Currituck, and Tyrrell) are able to remain together with the coastal counties with whom they share economic and other interests.

Differences between the House and Senate plans in the 12th district were resolved quickly. The House agreed to include Winston-Salem in the 12th district in one of its first counter-offers to the Senate, recognizing that it was the only major city in the Triad area not included in the urban-based 12th district.

After the 3rd district and 12th district were resolved, the negotiations focused on the dividing line in Wake County between the 2nd and 4th districts. TheSenate considered that many of the House plans for the 2nd district were not consistent with the goal of keeping a partisan balance and the House felt that the 2nd district in the Senate plans did not reflect the partisan makeup of the prior 2nd district. This issue was the last to be resolved.

7. Plans Presented at Public Hearing

Several plans were presented at the public hearings. These plans are contained as exhibits to the public hearing transcripts and are included in Attachments 97C-28F-3A and -3B. Of these plans, it is believed that only three were ever introduced as bills or offered as amendments: the plan presented by

¶ 97C-27R., CONTINUED . . .

Senator Cochrane (offered as an amendment to the first Senate plan and to the plan that was eventually enacted); a plan introduced by Representative Steve Wood (House Bill 599); and a plan introduced by Representative Robert Grady (House Bill 585). *See* Attachment 97C-27R-11. Neither Representative Grady nor Representative Wood offered his plan as an amendment to House Bill 586.

8. Public Access and Other Plans

The legislature provides access to the public so that any member of the public may draw a redistricting plan. The legislature also provides a qualified staff person to assist members of the public in using the public access redistricting computer. Numerous plans have been drawn by members of the public and interest groups using the public access computer. Attachment 97C-27R-12 contains a list of all congressional plans drawn by legislative staff, the public and others since January 1, 1996. The legislative staff has reviewed this list and, after eliminating plans that were duplicates, has produced summary reports on all staff plans and public access plans, including some plans for which the districts were not completed or which were attempts to draw only certain districts. A map is also included with the reports. The reports provide summary information on population, voting age population, registration, and elections of the districts. This information is included in Attachment 97C-27R-12.

DB: NORTH CAROLINA — District Summary — Total Populations, All Ages — Plan: 97 HOUSE/SENATE PLAN A — Date: 3/26/97 — Time: 10:37 a.m. — Page: 1

Plan type: CONGRESSIONAL WITH 97 HOME SEATS

District Name	Total Pop.	Total White	Total Black	Total Am. Ind.	Total Asian/PI	Total Other
District 1	552,161 100.00%	268,458 48.62%	277,565 50.27%	3,461 0.63%	1,238 0.22%	1,440 0.26%
District 2	552,152 100.00%	388,234 70.31%	154,108 27.91%	2,267 0.41%	4,183 0.76%	3,363 0.61%
District 3	552,622 100.00%	429,481 77.72%	109,358 19.79%	2,131 0.39%	5,625 1.02%	6,027 1.09%
District 4	551,842 100.00%	421,224 76.33%	116,006 21.02%	1,454 0.26%	10,770 1.95%	2,391 0.43%
District 5	552,084 100.00%	471,868 85.47%	75,177 13.62%	1,045 0.19%	2,381 0.43%	1,613 0.29%

District 6	552,171 100.00%	493,140 89.31%	52,248 9.46%	2,039 0.37%	3,279 0.59%	1,463 0.26%
District 7	552,382 100.00%	371,545 67.26%	133,985 24.26%	40,845 7.39%	2,791 0.51%	3,216 0.58%
District 8	553,143 100.00%	373,569 67.54%	153,396 27.73%	14,294 2.58%	5,541 1.00%	6,343 1.15%
District 9	552,615 100.00%	481,834 87.19%	61,443 11.12%	1,517 0.27%	6,408 1.16%	1,413 0.26%
District 10	553,333 100.00%	512,213 92.57%	36,123 6.53%	933 0.17%	2,482 0.45%	1,583 0.29%
District 11	552,089 100.00%	512,127 92.76%	29,276 5.30%	7,888 1.43%	1,838 0.33%	960 0.17%
District 12	552,043 100.00%	284,799 51.59%	257,644 46.67%	2,282 0.41%	5,630 1.02%	1,689 0.31%

Total	6,628,637 100.00%	5,008,492 75.56%	1,456,329 21.97%	80,156 1.21%	52,166 0.79%	31,501 0.48%

DB: NORTH CAROLINA — District Summary — Date: 3/26/97
Voting Age Populations — Time: 10:37 a.m.
Plan: 97 HOUSE/SENATE PLAN A — Page: 1
Plan type: CONGRESSIONAL WITH 97 HOME SEATS

District Name	Total Vot. Age	Vot. Age White	Vot. Age Black	Vot. Age Am. Ind.	Vot. Age Asian/PI	Vot. Age Other
District 1	403,065 100.00%	211,273 52.42%	187,573 46.54%	2,450 0.61%	872 0.22%	955 0.24%
District 2	419,099 100.00%	303,740 72.47%	108,234 25.83%	1,649 0.39%	3,169 0.76%	2,307 0.55%
District 3	417,769 100.00%	330,971 79.22%	76,672 18.35%	1,657 0.40%	4,012 0.96%	4,457 1.07%

District 4	427,266 100.00%	332,013 77.71%	84,535 19.79%	1,118 0.26%	7,927 1.86%	1,673 0.39%
District 5	428,181 100.00%	370,222 86.46%	54,468 12.72%	774 0.18%	1,679 0.39%	1,039 0.24%
District 6	426,321 100.00%	384,226 90.13%	37,317 8.75%	1,472 0.35%	2,263 0.53%	1,044 0.24%
District 7	408,299 100.00%	287,254 70.35%	90,009 22.04%	26,816 6.57%	2,067 0.51%	2,153 0.53%
District 8	402,666 100.00%	283,487 70.40%	101,961 25.32%	9,096 2.26%	3,909 0.97%	4,213 1.05%
District 9	419,559 100.00%	371,456 88.53%	41,670 9.93%	1,110 0.26%	4,358 1.04%	966 0.23%
District 10	425,367 100.00%	396,936 93.32%	25,136 5.91%	696 0.16%	1,499 0.35%	1,102 0.26%

District 11	430,111 100.00%	402,639 93.61%	20,455 4.76%	5,159 1.20%	1,257 0.29%	601 0.14%
District 12	414,784 100.00%	228,346 55.05%	179,846 43.36%	1,671 0.40%	3,812 0.92%	1,109 0.27%
Total	5,022,487 100.00%	3,902,563 77.70%	1,007,876 20.07%	53,668 1.07%	36,824 0.73%	21,619 0.43%

DB: NORTH CAROLINA

District Summary
Registration
Plan: 97 HOUSE/SENATE PLAN A

Date: 3/26/97
Time: 10:37 a.m.
Page: 1

Plan type: CONGRESSIONAL WITH 97 HOME SEATS

District Name	Total Reg.	White Reg.	Black Reg.	Other Reg.	Dem. Reg.	Repub. Reg.
District 1	271,673 100.00%	148,208 54.55%	121,958 44.89%	1,491 0.55%	235,336 86.62%	31,393 11.56%

District 2	262,713 100.00%	197,138 75.04%	64,603 24.59%	972 0.37%	188,416 71.72%	63,567 24.20%
District 3	213,448 100.00%	177,975 83.38%	34,801 16.30%	688 0.32%	148,801 69.71%	54,152 25.37%
District 4	315,782 100.00%	255,728 80.98%	55,959 17.72%	4,095 1.30%	200,635 63.54%	86,394 27.36%
District 5	295,332 100.00%	261,355 88.50%	33,380 11.30%	597 0.20%	172,461 58.40%	105,168 35.61%
District 6	290,562 100.00%	266,904 91.86%	22,935 7.89%	726 0.25%	143,304 49.32%	127,298 43.81%
District 7	273,584 100.00%	193,592 70.76%	61,670 22.54%	18,322 6.70%	200,676 73.35%	63,969 23.38%
District 8	233,898 100.00%	170,879 73.06%	58,907 25.18%	4,112 1.76%	160,694 68.70%	61,417 26.26%

District 9	295,719 100.00%	267,583 90.49%	27,125 9.17%	1,011 0.34%	153,291 51.84%	120,359 40.70%
District 10	300,037 100.00%	283,994 94.65%	15,676 5.22%	365 0.12%	139,665 46.55%	140,415 46.80%
District 11	319,610 100.00%	304,158 95.17%	13,108 4.10%	2,344 0.73%	188,349 58.93%	111,979 35.04%
District 12	277,525 100.00%	150,264 54.14%	126,488 45.58%	773 0.28%	197,783 71.27%	65,708 23.68%
Total	3,349,883 100.00%	2,677,778 79.94%	636,610 19.00%	35,496 1.06%	2,129,411 63.57%	1,031,819 30.80%

DB: NORTH CAROLINA

District Summary
Elections
Plan: 97 HOUSE/SENATE PLAN A

Date: 3/26/97
Time: 10:37 a.m.
Page: 1

Plan type: CONGRESSIONAL WITH 97 HOME SEATS

District Name	Senate Gantt	Senate Helms	Lt. Gov. Rand	Lt. Gov. Gardner	Court Lewis	Court Smith
District 1	84,590 53.28%	74,183 46.72%	97,349 61.83%	60,092 38.17%	101,516 69.66%	44,207 30.34%
District 2	77,449 47.00%	87,350 53.00%	82,802 51.02%	79,483 48.98%	80,919 54.34%	67,993 45.66%
District 3	53,362 41.53%	75,119 58.47%	62,499 46.85%	70,906 53.15%	65,828 53.48%	57,263 46.52%
District 4	116,953 58.79%	81,994 41.21%	104,429 53.36%	91,266 46.64%	91,593 52.33%	83,439 47.67%
District 5	71,185 39.17%	110,556 60.83%	88,395 45.71%	104,989 54.29%	82,168 46.53%	94,441 53.47%

District 6	65,644 37.47%	109,545 62.53%	73,141 41.17%	104,528 58.83%	63,286 37.99%	103,287 62.01%
District 7	75,154 48.26%	80,562 51.74%	91,897 57.23%	68,676 42.77%	87,320 58.70%	61,441 41.30%
District 8	64,574 47.40%	71,664 52.60%	76,221 55.44%	61,265 44.56%	69,792 55.29%	56,442 44.71%
District 9	79,462 44.75%	98,104 55.25%	72,891 40.95%	105,102 59.05%	60,368 38.22%	97,577 61.78%
District 10	69,023 37.37%	115,669 62.63%	77,694 40.03%	116,377 59.97%	73,264 39.30%	113,144 60.70%
District 11	86,212 45.93%	101,511 54.07%	94,396 47.13%	105,889 52.87%	91,924 48.91%	96,040 51.09%
District 12	107,333 66.49%	54,101 33.51%	93,441 62.08%	57,084 37.92%	85,103 61.54%	53,177 38.46%

Total	950,941 47.28%	1,060,363 52.72%	1,015,155 49.74%	1,025,657 50.26%	953,081 50.65%	928,451 49.35%

DB: NORTH CAROLINA — District Summary — Date: 2/20/97
Total Populations, All Ages — Time: 10:07 a.m.
Plan: 1992 CONGRESSIONAL BASE PLAN #10 — Page: 1
Plan type: Congressional Base Plan

District Name	Total Pop.	Total White	Total Black	Total Am. Ind.	Total Asian/PI	Total Other
District 1	552,386 100.00%	229,829 41.61%	316,290 57.26%	3,424 0.62%	1,146 0.21%	1,698 0.31%
District 2	552,386 100.00%	421,083 76.23%	121,212 21.94%	3,154 0.57%	4,077 0.74%	2,860 0.52%
District 3	552,387 100.00%	423,398 76.65%	118,640 21.48%	2,436 0.44%	4,044 0.73%	3,869 0.70%
District 4	552,387 100.00%	426,361 77.19%	111,168 20.13%	1,548 0.28%	10,602 1.92%	2,714 0.49%
District 5	552,386 100.00%	463,183 83.85%	83,824 15.17%	1,083 0.20%	2,448 0.44%	1,848 0.33%

District 6	552,386 100.00%	504,465 91.32%	41,329 7.48%	1,973 0.36%	3,489 0.63%	1,129 0.20%
District 7	552,386 100.00%	394,855 71.48%	103,428 18.72%	40,166 7.27%	5,835 1.06%	8,102 1.47%
District 8	552,387 100.00%	402,406 72.85%	128,417 23.25%	13,789 2.50%	4,232 0.77%	3,543 0.64%
District 9	552,387 100.00%	492,424 89.14%	49,308 8.93%	1,729 0.31%	7,373 1.33%	1,553 0.28%
District 10	552,386 100.00%	517,542 93.69%	30,155 5.46%	942 0.17%	2,238 0.41%	1,510 0.27%
District 11	552,387 100.00%	502,058 90.89%	39,767 7.20%	7,835 1.42%	1,791 0.32%	936 0.17%
District 12	552,386 100.00%	230,888 41.80%	312,791 56.63%	2,077 0.38%	4,891 0.89%	1,739 0.31%

Total	6,628,637 100.00%	5,008,492 75.56%	1,456,329 21.97%	80,156 1.21%	52,166 0.79%	31,501 0.48%

DB: NORTH CAROLINA — District Summary — Date: 2/20/97
Voting Age Population — Time: 10:07 a.m.
Plan: 1992 CONGRESSIONAL BASE PLAN #10 — Page: 1
Plan type: Congressional Base Plan

District Name	Total Vot. Age	Vot. Age White	Vot. Age Black	Vot. Age Am. Ind.	Vot. Age Asian/PI	Vot. Age Other
District 1	399,969 100.00%	181,933 45.49%	213,602 53.40%	2,428 0.61%	844 0.21%	1,110 0.28%
District 2	420,087 100.00%	328,676 78.24%	84,311 20.07%	2,173 0.52%	3,074 0.73%	1,963 0.47%
District 3	413,263 100.00%	324,808 78.60%	81,170 19.64%	1,755 0.42%	2,922 0.71%	2,608 0.63%

District 4	428,984 100.00%	336,850 78.52%	81,210 18.93%	1,239 0.29%	7,782 1.81%	1,903 0.44%
District 5	428,782 100.00%	364,886 85.10%	60,204 14.04%	822 0.19%	1,650 0.38%	1,221 0.28%
District 6	428,096 100.00%	393,271 91.87%	30,188 7.05%	1,433 0.33%	2,407 0.56%	798 0.19%
District 7	414,413 100.00%	306,754 74.02%	71,071 17.15%	26,489 6.39%	4,201 1.01%	5,898 1.42%
District 8	403,678 100.00%	305,366 75.65%	84,386 20.90%	8,699 2.15%	2,956 0.73%	2,271 0.56%
District 9	421,615 100.00%	380,364 90.22%	33,849 8.03%	1,275 0.30%	5,059 1.20%	1,069 0.25%
District 10	421,456 100.00%	397,476 94.31%	20,837 4.94%	700 0.17%	1,409 0.33%	1,036 0.25%

District 11	430,457 100.00%	396,064 92.01%	27,438 6.37%	5,126 1.19%	1,237 0.29%	592 0.14%
District 12	411,687 100.00%	186,115 45.21%	219,610 53.34%	1,529 0.37%	3,283 0.80%	1,150 0.28%
Total	5,022,487 100.00%	3,902,563 77.70%	1,007,876 20.07%	53,668 1.07%	36,824 0.73%	21,619 0.43%

DB: NORTH CAROLINA

District Summary
Registration
Plan: 1992 CONGRESSIONAL BASE PLAN #10

Date: 2/20/97
Time: 10:07 a.m.
Page: 1

Plan type: Congressional Base Plan

District Name	Total Reg.	White Reg.	Black Reg.	Other Reg.	Dem. Reg.	Repub. Reg.
District 1	270,229 100.00%	132,323 48.97%	136,536 50.53%	1,296 0.48%	235,445 87.13%	29,509 10.92%

District 2	270,061 100.00%	219,727 81.36%	48,153 17.83%	2,196 0.81%	190,564 70.56%	66,366 24.57%
District 3	248,318 100.00%	201,699 81.23%	45,684 18.40%	955 0.38%	173,132 69.72%	64,771 26.08%
District 4	306,226 100.00%	250,780 81.89%	53,212 17.38%	2,238 0.73%	191,876 62.66%	88,762 28.99%
District 5	293,437 100.00%	255,458 87.06%	37,427 12.75%	550 0.19%	178,786 60.93%	97,316 33.16%
District 6	292,842 100.00%	273,216 93.30%	18,907 6.46%	726 0.25%	145,337 49.63%	128,153 43.76%
District 7	218,613 100.00%	162,148 74.17%	38,413 17.57%	18,104 8.28%	154,517 70.68%	55,296 25.29%
District 8	254,082 100.00%	197,961 77.91%	52,140 20.52%	3,973 1.56%	166,645 65.59%	74,262 29.23%

District 9	296,124 100.00%	270,843 91.46%	24,125 8.15%	1,154 0.39%	148,223 50.05%	124,786 42.14%
District 10	297,917 100.00%	283,928 95.30%	13,611 4.57%	398 0.13%	135,660 45.54%	142,775 47.92%
District 11	318,958 100.00%	299,765 93.98%	16,847 5.28%	2,338 0.73%	192,259 60.28%	107,923 33.84%
District 12	283,076 100.00%	129,930 45.90%	151,555 53.54%	1,568 0.55%	216,967 76.65%	51,900 18.33%
Total	3,349,883 100.00%	2,677,778 79.94%	636,610 19.00%	35,496 1.06%	2,129,411 63.57%	1,031,819 30.80%

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ATTACHMENT 97C-28F-4F(l), STATEMENT OF REPRESENTATIVE EDWIN MCMAHAN

HOUSE CONGRESSIONAL REDISTRICTING COMMITTEE DISCUSSION HOUSE FLOOR 3-26-97

Speaker Brubaker: For what purpose does the Gentleman from Moore arise.

Representative Morgan: Mr. Speaker, House Bill 586 - short title Congressional Redistricting 2 is placed on today's calendar.

Speaker Brubaker: Clerk will read.

Clerk: House Congressional Redistricting, Committee - House Committee Substitute for House Bill 586 - A bill to be entitled **AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS.**

Speaker Brubaker: The Chair recognizes the Gentleman from Mecklenburg to explain the bill.

Representative McMahan: Mr. Speaker - Members of the House -

Eight weeks ago today I was appointed by Speaker Brubaker to chair the Congressional Redistricting Committee. At the time, I really didn't know what I was getting into, but today I must wonder what I did to the Speaker to deserve this punishment.

ATTACHMENT 97C-28F-4F(1), CONTINUED . . .

Seriously, I first want to thank the 25 Members of our Committee for their input and support. The Committee Substitute before you has received a favorable report from our Committee and does include the Plan agreed upon by the Senate Congressional Committee. So this Plan has been negotiated between both sides for the past eight weeks. It is not a perfect Plan, but we have tried very hard to agree upon a Plan that is based on geographic compactness, racial fairness, population that is homogeneously compatible, incumbency friendly, and would divide the fewest number of counties and precincts as possible. The Current Plan divides 45 Counties and 80 precincts - new Plan divides 22 Counties and only 2 Precincts.

I want to point out to each member that this Job has been made doubly hard because we received an ultimatum in 1992 to have a second Majority/Minority District, but last year our 12th District, as you know, was ruled unconstitutional. So the point I want to make is that we have tried to agree on a Plan that will be approved by the Justice Department and also be found constitutional.

As I said earlier, we don't have a perfect Plan, but I want you to compare it closely to our Current Plan that I have placed on your desk.

ATTACHMENT 97C-28F-4F(1), CONTINUED . . .

Starting in the West, please look at District 9, 10, 11 and see that we no longer divide Buncumbe, Henderson, Polk, McDowell, and Rutherford County.

The current Plan also has parts of District 5 extending into Burke, Caldwell and Wilkes County - our new Plan no longer splits those counties.

We also have now Cleveland and Gaston together in District 9 and not divided as in the Current Plan.

As you look at 12, we no longer extend from Gastonia to Durham - now only extends from Charlotte to Greensboro. We believe this District will now stand a Court test for the following reasons:

1. Not a Majority/Minority District now so shape does not create that - that was the basis the Court used to say this was unconstitutional - not an argument now.

2. Population in 12 has homogeneous interest - comprised of many citizens living in an urban setting.

3. Drawn to protect the Democratic incumbent.

All three factors are recognized as legitimate factors for drawing Congressional District Plans.

Not a great deal of change has occurred in District 8 except now we don't divide Moore County.

District 6 is also very similar - except it includes Moore County.

Moving East, a great deal of change and certainly improvement has occurred due to realigning District 1 - old map has District 1 really scattered over the entire Eastern North Carolina. Now we have a considerably more compact District 1 that still has over 50% of a minority population.

With the changes in District 1, we are now able to keep Columbus, Brunswick, New Hanover, Pender, Duplin and Onslow Counties together, and all in District 7 except Onslow, which is in District 3.

District 3 also more compact because it does not now come from the coast all the way into Sampson and Duplin County.

Now to the Triangle where we have caused the most controversy. If you look at the Current Map, you see how District 2 wraps around Wake County on the north and takes part of Durham County - now that District 12 from Charlotte no longer extends into Durham County, it certainly makes more sense to put Durham back together and combine it with Orange County and Chatham County -- counties already in District 4 -

than to either put it entirely in District 2 or extend District 1 down from N/E to pick up Durham County. When we pick up Durham County, it obviously causes us to divide Wake County, and the logical division in my opinion is to include the Research Triangle and Western Wake County in with Durham and Chapel Hill, and Eastern Wake County moves into District 2. This also makes more sense to me than the original Senate Plan that divides Wake on a more East/West line with North Wake County going into District 4 - and South Wake County, including Cary, moving into District 2. This seems to make sense not only for geographic compactness but also the makeup of the population certainly appears more homogeneous with the Triangle and 3 major Universities together. I regret that this has not made some of my good friends from Wake County happy, but I would like to point out that the other major counties, Guilford, Forsyth, and Mecklenburg, are all divided and represented by 2 Congressman and that is not all bad. Major metropolitan areas have a lot of needs unique to their area and having 2 Congressman working together for your county can be very positive.

So, to close, I ask each of you to look at what we have done as to a total Plan for our State - again, taking into consideration the directives we have from both the Justice Department, the Court, the incumbency issue and all the other factors. Please keep in mind all the many other factors we have had pulling on us in doing this job. Those of us involved have done our dead level best to agree on a Plan that both sides of

the aisle in each Chamber can support. Our alternative after next Tuesday will be to turn this matter over to the three judge panel to do our jobs. I am hopeful that we can forget the partisanship we may have on this issue and let's do this job that the Constitution directs us to do and not have to ask the Court to help us. I really don't think any of us want to send that kind of message to the citizens across North Carolina.

Please note that the bill also provides a back up plan that goes to 0% population variance if the Court should rule the Plan unconstitutional because of the very small variance we have between Districts. It will then divide 12 precincts in lieu of 2 to meet this requirement. Again, this is only in the event we need to go to 0% population, which most of us do not believe we will need to do.

Mr. Speaker, Representative Sutton will offer an Amendment that makes a slight change in Robeson County that has been agreed to by all parties. It had been agreed to earlier, but somehow got changed in the final Plan approved in Committee yesterday, and I apologize for that.

I understand that other Amendments will be offered and even though I want each Member offering an Amendment to know that I respect their reason for doing it. I must ask my fellow Members to please keep the Plan in tact. If one change is made, other than Representative Sutton, we will begin to unravel weeks of intense negotiations and agreements that have

happened in small steps along the way. Please understand that I can appreciate the reason for the Amendments being offered, but I must ask both sides to please defeat them to protect the integrity of the overall Plan so that we can get it approved in both bodies.

Thank you.

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ATTACHMENT 97C-28F-4F(2), STATEMENT OF SENATOR ROY COOPER

VERBATIM TRANSCRIPT OF FLOOR DEBATE ON HB 586 (COMMITTEE SUBSTITUTE) CONGRESSIONAL REDISTRICTING SENATE CHAMBER THURSDAY, MARCH 27, 1997

Reading Clerk:

The Committee Substitute for HB 586, A BILL TO BE ENTITLED AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS, referred to the Select Committee on Redistricting.

Senator Cooper: Mr. President.

President: The members will take their seats, the Senate will come to order. I believe you all might want to hear about this.

Senator Cooper: Mr. President.

President: Senator Cooper

Senator Cooper: To make an announcement.

President: The Senator may make his announcement.

Senator Cooper: Mr. President, the President Pro Tem will, hopefully before he walks out the door or maybe the Rules Chairman will, let us recess for fifteen (15) minutes to hold the Select Committee on Congressional Redistricting. It will be held in Room 1124, would ask you to please take your bill and your maps that are currently on your desks, take it down to the committee room with you. We don't have but a few extra copies and we would ask you to take it with you to the committee and then bring it back with you up to the floor so that we won't have to have additional copies made. We will do that right now as soon as you call a recess, Mr. President.

RECESS

President: Senator Cooper is recognized.

Senator Cooper: Mr. President, I would like to sent forth a committee report from the Select Committee on Congressional Redistricting.

President: The Senator may send forth his report. The clerk will read.

Reading Clerk: Senator Cooper, for the Redistricting Committee.

Committee Substitute for HB 586, A BILL TO BE ENTITLED AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE

CONGRESSIONAL DISTRICTS. The committee recommends the bill do pass.

Senator Cooper: Mr. President.

President: Senator Cooper is recognized for a motion.

Senator Cooper: Mr. President, I move that the rules be suspended to the end that the House Bill that was just read in be placed on the floor for immediate consideration.

President: You have heard the motion. Any discussion. If not, all in favor say "aye" opposed say "no." The Chair rules that's two-thirds (2/3). The clerk will read.

Reading Clerk: H.B. 586, A BILL TO BE ENTITLED AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS, reported favorably.

President: Senator Cooper is recognized to explain the bill.

Senator Cooper: Thank you, Mr. President, members of the Senate. Today we have a congressional redistricting plan that splits forty-six (46) counties, that has six (6) counties which have three members of Congress, and which splits over eight (80) precincts. The plan we have today has some social merit. As a result of this plan, for the first time in many, many years, we have two minority members of Congress as a result

of the current plan. However, we have a plan that is a geographic mess. I have, for your viewing pleasure if you want to call it that, had placed on your desks a copy of the current map so that you can see how difficult it is for people to know in which Congressional district they reside. Last year, the United States Supreme Court ordered the Legislature to redraw the map as a result of the 12th Congressional District being declared unconstitutional. Now there are arguments for and against this decision. In fact, the Court found it close. It was a 5-4 decision and one of those Justices sort of wavered back and forth - Justice O'Connor. But the result was that the 12th District was held unconstitutional by a 5-4 decision and we were ordered by April 1 to come up with a new map. When this process began, we had a House controlled by the Republican Party and a Senate controlled by the Democratic Party and people were saying that it couldn't be done, that we could not reach an agreement. In fact, other states which had been ordered by the Court to redraw their plans under similar circumstances, other states have been unable to agree on a plan. I want to commend all of those who have been involved in this process because we have agreed on a plan - a plan that is fair and workable. You have the plan on your desk, it is entitled "97 House/Senate Plan A." This plan reduces the number of counties that are split from forty-five (45) to twenty-two (22). There are now only 22 counties split under this plan. It reduces the number of precincts split from over eighty (80) to two (2) and those two precincts have special circumstances with satellite annexations, etc. and are split under most other plans

as well. You have a plan which provides for geographic compactness, provides for consideration of community of interest, and provides for fair partisan balance. I think that all of the congressional districts would be competitive. However, it is likely that, if political fortunes remain the same, that we would end up with a plan that would elect six Democrats and six Republicans. We said from the beginning in the Senate that in 1996 the people made a decision to elect six members of Congress from the Democratic Party and six members of Congress from the Republican Party and we should not use court-ordered redistricting to alter that result. Therefore, we've come up with the plan that you see before you. In considering the plan, we looked at community of interest, looking at keeping precincts whole, at keeping counties whole as much as possible. We looked at making sure that no counties had more than two members of Congress representing the county. We looked at racial fairness. Let me tell you a little bit about the 1st and the 12th Districts because the unconstitutionality of the 12th District is the reason why we are here. You have the statistics on your desk, but the 1st District is majority minority, total population 50.27%.

However, let me emphasize that race was not the predominate factor in drawing the 1st Congressional District. We have a district that has ten whole counties and ten split counties. It's a district which respects the rural agrarian nature of the northeast. It is a district which, I believe, that a minority member of Congress or even a minority challenger would have

an excellent chance to be re-elected, but I believe the 1st District not only is constitutional, but also complies with the Voting Rights Act which is also a responsibility we have with this plan to have it pre-cleared by the Justice Department and held constitutional by the Courts. The 12th District is almost 47% majority minority. Currently, the 12th District under our current plan is majority minority. I believe that this new 12th District is constitutional for several reasons. First, and maybe most importantly, when the Court struck down the 12th District it was because the 12th District was majority minority and it said that you cannot use race as the predominate factor in drawing the districts. Well guess what! The 12th District, under this plan, is not majority minority. Therefore, it is my opinion and the opinion of many lawyers that the test outlined in Shaw vs. Hunt will not even be triggered because it is not a majority minority district and you won't even look at the shape of the district in considering whether it is constitutional. That makes an eminent amount of sense because what is the cut-off point for when you have the trigger of when a district looks ugly. I think that the court will not even use the shape test, if you will, on the 12th District because it is not majority minority. It is strong minority influence, and I believe that a minority would have an excellent chance of being elected under the 12th District. If, however, the court decides that the test is triggered for some reason and that we should look at the criteria outlined in Shaw vs. Hunt, you need to look at what the, how we have improved the shape of the 12th District. First, it is much more compact. It is 67% shorter in length than under the

old plan and you see how the old plan stretches from Gastonia to Durham. You can drive the length of this district in two hours. It is the third shortest district in the entire State. It covers six (6) counties instead of ten (10), it connects the metropolitan area of Charlotte and the metropolitan area of the Triad. There is certainly a community of interest along that corridor, economic, social, and otherwise. It is much wider and it takes into consideration the incumbent and political balance. For all of those reasons, I believe that the 12th District will be held constitutional. Members of the Senate, redistricting is a difficult process - I don't want this job again, but I believe that we have been able to overcome partisan politics and we have been able to reach a plan that is fair to the people of North Carolina, and fair to all involved. The House agrees. Yesterday, the House voted unanimously in favor of this plan - 87-30. Of those 87 members who voted "yes", 52 were Republicans and 35 were Democrats. That is a good strong bipartisan show of support for this plan. I believe that this plan is acceptable to all of the members of Congress. There are a couple who have stated objections about the way that some area had been moved around, but as far as the partisan nature of the districts is concerned, we have preserved the current partisan nature of each of the districts and for that reason, I think that all of the incumbents are satisfied. And let me emphasize to you that this is not an incumbent protection plan. This is a plan that attempts to preserve the partisan nature of each of the twelve districts as they now exist. I believe that we've done that with this plan. Members of the Senate, I encourage you to vote for

this plan. We have a responsibility as a legislature to draw a plan. It's easier politically to say "let the courts do it", but that's rolling the dice. Number one, you don't know what you are going to get and, number two, it is shirking our responsibility as representatives of the people to do what the Court has ordered us to do. We may not like everything about the plan, there are some parts of the plan that I wish I could change, but the process of negotiations require give and take. That's what has happened here. I think we have a result that is fair and equitable for all of the people of North Carolina and I encourage your "yes" vote. Thank you.

President: For what purpose does Senator Reeves arise?

Senator Reeves: To ask if Senator Cooper will yield.

President: He yields.

Senator Reeves: Senator Cooper, during your presentation of the plan over the last several weeks, did you have a chance to look at Plan 0 which we submitted to you for your review?

Senator Cooper: Yes. Senator Reeves is referring to a plan that both Senator Reeves and Senator Miller support which would keep Wake County whole and couple it with Chatham and Orange as the current 4th District is currently configured. They have pushed hard for that plan. We officially presented that plan to the House, it was summarily rejected. I believe that

if the Senate insisted upon that plan of keeping Wake County whole, that we would end up letting the federal courts draw this plan because they would not accept it.

Senator Reeves: In reviewing the order from the courts to redraw these districts, they keyed on District 12 and District 1. They did not mention District 4 or 2 as being a problem and, indeed, in my review, of the plan as we have it right now the base plan as it is set out, District 4 is not the problem. District 4 has two, almost two and one-half (2 ½) counties and now we are going to split the largest of those counties right down the middle. What is the rationale of the House and what is your rationale for making this fundamental change in District 4 and District 2.

Senator Cooper: The 12th District currently stretches from Gastonia to Durham. You necessarily have to change every single district in the state in order to rectify the unconstitutionality of the 12th District. Therefore, we had to make changes in all of the districts. If you were to keep Wake County whole under the current 4th District plan, the 2nd District would have to stretch almost completely around the 4th District in order to get enough population and you would end up having a situation where you would have almost a doughnut, with the 4th District being the middle of the doughnut and if we are looking at a plan that provides for geographic compactness, that's not one that I think that we should consider.

ATTACHMENT 97C-28F-4F(2), CONTINUED . . .

However, I presented it as an option and pushed for it at the instance of you and Senator Miller and we were not successful.

Senator Reeves: Thank you.

DEFENDANTS' MOTION TO STRIKE AFFIDAVITS FILED IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4-96-CV-104-BO(3)

MARTIN CROMARTIE, THOMAS CHANDLER MUSE, and GLENNES DODGE WEEKS,
Plaintiffs.

v.

JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, et al.,
Defendants.

MOTION TO STRIKE AFFIDAVITS FILED IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF MOTION

NOW COME the defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and move the Court to strike the affidavits of R.O. Everett, J.H. Froelich, Jr., Neil C. Williams, John Weatherly, and Lee Mortimer, which were filed

by plaintiffs in support of their motion for summary judgment.[1] The legal and factual grounds for this motion are set out below.

INTRODUCTION

On or about February 5, 1998, plaintiffs filed a motion and brief seeking summary judgment on their claim that the State's 1997 Congressional redistricting plan is an unconstitutional racial gerrymander. Plaintiffs contend that Districts 1 and 12 were drawn with a predominately racial motive and are tainted by the prior districts from the 1992 Congressional plan. In support of their claim, plaintiffs filed the affidavits of two plaintiffs who reside in District 12, R.O. Everett and J.H. Froelich, Jr., along with affidavits from three other citizens who do not live in the challenged districts, Neil C. Williams, John Weatherly and Lee Mortimer. The affidavits of these plaintiffs and interested citizens are rife with hearsay, speculation, personal opinions, and unsupported conclusions and beliefs which are not based on personal knowledge. For this reason the affidavits are not competent evidence to support plaintiffs' motion for summary judgment and must be struck.

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[1] Plaintiffs also rely on these same affidavits to support their motion for preliminary injunction. For the same reasons they must be struck from consideration for summary judgment, these affidavits should carry no weight in deciding plaintiffs' motion for preliminary injunction.

ARGUMENT

An affidavit filed as evidence in a summary judgment proceeding "must present evidence in substantially the same form as if the affiant were testifying in court." *Evans v. Technologies Applications & Service Co.*, 80 F.3d 954, 962 (4th Cir. 1996). Federal Rule of Civil Procedure 56(e) specifically requires that affidavits supporting or opposing a motion for summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." *See Scosche Industries, Inc. v. Visor Gear, Inc.*, 121 F.3d 675, 681 (Fed. Cir. 1997). In evaluating evidence concerning a summary judgment motion, "a court may not consider affidavits that do not satisfy the requirements of Fed. R. Civ. P. 56(e)." *El Deeb v. University of Minn.*, 60 F.3d 423, 429 (8th Cir. 1995).

AFFIDAVITS OF EVERETT, FROELICH AND WILLIAMS

The affidavits of Everett, Froelich and Williams are inadmissible conclusory expressions of personal beliefs and lay opinions and are not competent evidence for purposes of deciding a summary judgment motion. Everett offers testimony that he "perceive[s]" that the shape of District 12 in the 1992 plan was predominantly motivated by race and also his lay opinion that the shape of District 12 in the 1997 plan is still a racial gerrymander motivated predominately by race. Everett, a local businessman from Rowan County who had no involvement in the legislature's redistricting process, also speculates that the boundaries would have been quite different

if race-neutral principles such as compactness, contiguity, and political subdivisions had been followed. Similarly, Froelich, a businessman from Guilford County who had no involvement in the legislature's redistricting process, offers his personal belief that apart from a racial motive, no one could justify putting Mecklenburg and Guilford Counties in the same district. He further speculates that based on race-neutral redistricting principles all of Mecklenburg County would be in one district, while all of Guilford County would be in another district. The Williams affidavit offers similar incompetent testimony. Williams, a lawyer and local politician from Mecklenburg County who lost the Republican primary in 1994 in District 9, also had no involvement in the legislature's redistricting process. However, he offers his personal belief that it "is apparent" that racial motives predominated in creating District 12 and speculates that using traditional redistricting principles of compactness, contiguity and respect for political subdivisions and actual communities of interest, all of Mecklenburg County would be in a single district. Finally, he offers his legal conviction that District 12 is the "fruit of the poisonous tree."

As a matter of law, such conclusory and speculative statements of belief are insufficient to support summary judgment on the issue of whether race was the predominate factor motivating the legislature's redistricting decision. "[O]nly statements 'made on personal knowledge' will support a motion for summary judgment; statements of mere belief

must be disregarded." *Tavery v. United States*, 32 F.3d 1423, 1435 (10th Cir. 1994) (quoting *Automatic Radio Mfg. Co. v. Hazeltine Research*, 339 U.S. 827, 831, 70 S. Ct. 894, 896, 94 L. Ed. 1312 (1950)). *See also Jameson v. Jameson*, 176 F.2d 58, 60 (D.C. Cir. 1949) ("Belief, no matter how sincere, is not equivalent to knowledge."); *Carey v. Beans*, 500 F. Supp. 580, 583 (E.D. Pa. 1980) (on summary judgment, statements prefaced by the phrases "I believe" or those made upon an "understanding" are properly subject to a motion to strike). Because personal knowledge is the necessary foundation for lay testimony, "affidavits composed of hearsay and opinion evidence do not satisfy Rule 56(e) and must be disregarded." *Scosche Industries*, 121 F.3d at 681 (citing *State Mut. Life Assurance Co. of Am. v. Deer Creek Park*, 612 F.2d 259, 264-65 (6th Cir. 1979) and *Rossi v. Trans World Airlines, Inc.*, 507 F.2d 404, 406 (9th Cir. 1974)). Similarly, "[s]peculation does not meet a party's burden" in a summary judgment proceeding and "[f]acts, not [a plaintiff's] perceptions and feelings, are required." *Uhl v. Zalk Josephs Fabricators, Inc.*, 121 F.3d 1133, 1137 (7th Cir. 1997).

The lay witness testimony offered by plaintiffs is not probative or competent evidence. The "gauzy generalities" of the affidavits offered by plaintiffs, which are "apparently based on something less than personal knowledge," prove nothing and "are not entitled to weight in the summary judgment balance." *Cadle Co. v. Hayes*, 116 F.3d 957, 961 (1st Cir. 1997). *See also Baker v. Latham Sparrowbush Assocs.*, 72

F.3d 246, 255 (2nd Cir. 1995) (allegation made solely upon information and belief without any supporting evidentiary facts could not be considered on motion for summary judgment); *U.S. for Use and Ben. of Conveyor Rental & Sales Co. v. Aetna Cas. & Sur. Co.*, 981 F.2d 448, 454, (9th Cir. 1992) (affidavit was inadmissible as evidence on summary judgment motion absent requisite personal knowledge of affiant). Evidence submitted in summary judgment affidavits must be based on personal knowledge and cannot be conclusory. *Evans*, 80 F.3d at 962. Because "self-serving opinions without objective corroboration [are] not significantly probative, the decision to strike and disregard as irrelevant" is proper. *Id.* In the instant case, the affidavits of Everett, Froelich and Williams consist of conclusory statements predicated on personal beliefs unsupported by objective facts. For these reasons, the affidavits must be struck by this Court pursuant to Rule 56(e).

AFFIDAVIT OF JOHN WEATHERLY

Representative John Weatherly is the current representative from House District 48 and previously served in the North Carolina House of Representatives in the 1989, 1993 and 1995 sessions. Although he served on an Election Laws Reform Committee in 1996, and unsuccessfully introduced a bill in 1997 to establish a redistricting commission, he did not serve in the General Assembly when the 1992 Congressional plan was enacted and was not a member of the House Committee on Congressional Redistricting during the 1997 session when the current redistricting plan was enacted. *See*

Bartlett Aff., Vol. IV at 97C-28F-3B, p. 3. Representative Weatherly's only link to the redistricting process was an appearance at the Public Hearing held by the General Assembly's Congressional Redistricting Committees on February 26, 1997, to speak in support of his bill to create a redistricting commission. (Weatherly's Commission bill was never enacted by the General Assembly.) Weatherly took this opportunity to criticize the proposed Senate and House redistricting plans presented at the public hearing on the grounds that they were designed for the primary purpose of protecting the interests of incumbents and political parties. *See* Bartlett Aff., Vol. IV at 97C-28F-3B, pp. 38-40. There was no suggestion in his public comments that Districts 1 and 12 were racial gerrymanders or that race was the predominant motive in the creation of these two districts.

Although he had no participation in the redistricting process other than appearing at the public hearing and casting a vote against the plan (Bartlett Aff., Vol. V at 97C-28F-4H at House Roll Call Vote #196), Representative Weatherly concludes in his affidavit that race predominated in determining the boundaries of Districts 1 and 12, and with no supporting evidence expresses his opinion that the General Assembly acted under a premise that two Congressional districts should be created to assure the election of African-Americans, specifically the incumbent African-Americans. He also expresses his conviction that the only conceivable motive for linking Mecklenburg with Guildford and Forsyth Counties

in a Congressional district was the racial motive of guaranteeing the election of an African-American. He further expresses his belief that the same racial motivation applied to the creation of District 1. Representative Weatherly candidly admits in his affidavit that his opinions and conclusions are not based on personal knowledge, but are based on hearsay--"statements made on or off the floor of the General Assembly or in Committee, on the final results of the redistricting process, and on [his] experience as a legislator." Weatherly Aff. at 4.

Representative Weatherly's beliefs and conclusions on the motivations behind the drawing of current Districts 1 and 12 are not competent admissible evidence. *See* discussion above at pp. 4-5, regarding the inadmissibility of conclusory statements of personal belief. In addition, "hearsay evidence, which is inadmissible at trial, cannot be considered on a motion for summary judgment." *Maryland Highway Contractors' Ass'n., Inc. v. State of Maryland*, 933 F.2d 1246, 1251-52 (4th Cir. 1991). *See also Miller v. Solem*, 728 F.2d 1020, 1026 (8th Cir. 1984) (affidavits containing hearsay statements failed to comply with Rule 56(e) requirements); *Pan-Islamic Trade Corp. v. Exxon Corp.*, 632 F.2d 539, 556 (5th Cir. 1980) (hearsay evidence in Rule 56 affidavits is entitled to no weight); *Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F.2d 665, 667 (9th Cir. 1980) (hearsay evidence is inadmissible and may not be considered by this court on review of a summary judgment). Representative Weatherly's inadmissible affidavit

"is very nearly entirely conclusory and devoid of specific facts to support his opinion." *Rohrbough v. Wyeth Labs., Inc.*, 916 F.2d 970, 975 (4th Cir. 1990). In addition, given the conflict between his conclusory affidavit alleging a predominant racial motive and his public statement criticizing the primary motive of protecting incumbents and political parties, the Court may disregard the affidavit. *Id.*

Finally, Representative Weatherly's affidavit is inadmissible to prove the legislature's motivation in enacting the 1997 Congressional plan and must be struck. It is a long standing rule of law in North Carolina that the affidavit or testimony of a member of the legislature may not be relied upon to prove legislative intent. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 581-82, 151 S.E.2d 241, 244 (1966). A statute "is an act of the legislature as an organized body" and it "expresses the collective will of that body" so that the understanding of a single member may not be accepted by the Court to ascertain the legislative intent. *Id. See also Milk Comm'n v. National Food Stores*, 270 N.C. 323, 332-33, 154 S.E.2d 548, 555 (1967) (testimony or affidavits of members of the legislature are not competent evidence of legislative intent and must be disregarded). Because North Carolina law provides that the affidavit of an individual member of the General Assembly is inadmissible and cannot be relied upon to prove legislative intent, the affidavit of Representative Weatherly attempting to establish the legislature's motive in drawing Districts 1 and 12 must be struck. *Empire Distribs. of*

N.C. v. Schieffelin & Co., 679 F. Supp. 541 (W.D.N.C. 1987). For all the foregoing reasons, this Court must disregard the affidavit of Representative Weatherly.

AFFIDAVIT OF LEE MORTIMER

Lee Mortimer, a self-professed expert on proportional representation, is a technical writer in the Research Triangle Park who has previous experience as a journalist. His educational background consists of an undergraduate degree from Western Carolina University in history with a minor in political science. As an active proponent of proportional representation, a representational theory irrelevant to Congressional elections, Mortimer purports to be qualified to provide expert testimony on the Congressional redistricting process in North Carolina. He had no involvement in and has no personal knowledge of the legislature's Congressional redistricting process. Mortimer's views on the motivation of the General Assembly and its leadership in drawing the 1997 Congressional plan are not based on any personal knowledge and his affidavit does not show affirmatively that he is competent based, on education, experience. or other training, to testify as an expert to the matters stated therein.

Despite an absence of qualifications to testify as an expert under Federal Rule of Evidence 702, Mortimer offers testimony consisting of a string of lay opinions:

- "in my opinion" the severe misshapenness indicates race predominated in determining District 1's boundaries.

- "So, in my opinion" it is clear from the resemblance to the previous districts that Districts 1 and 12 are the "fruit of the poisonous tree."

- "I believe" the new Districts 1 and 12 would never have been drawn with their present boundaries "except for race."

- "I can see no legitimate basis" for the way the minority communities were grouped together.

- "In my opinion" District 12 is a make over of the old unconstitutional district.

- "I believe" it is the process used to reach a result that "indicates" a racial intent.

- "In my opinion" the only explanation for disregarding the objective to maintain intact counties and municipalities is that such an objective undermined and conflicted with the predominate objective of maximizing the district's black population.

- "In my opinion" the inclusion of some minimum number of intact counties is an

important test of whether the district is raced-based.

- "It appears to me" District 12 has no intact counties because race was the predominant consideration.

- "I believe" the common characteristics test is a common sense criteria applied in redistricting cases to determine whether race predominated in drawing a district.

- "It is clear to me" that the option of drawing separate districts using Mecklenburg and Guildford Counties was not considered because it would not produce a district that had more than a 29 percent minority population.

See generally Mortimer Aff. at 3-9.

To be admissible, expert testimony must consist of scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence or to determine a fact in issue. *See*, Rule 702, Federal Rules of Evidence.

> [T]he plain language of the Rules maintains some limitations on expressions of opinion. Lay opinions must be "rationally based on the perception of the witness," Fed. R. Evid. 701,

> and, only experts qualified by "knowledge, skill, experience, training or education" may submit an opinion. Fed. R. Evid. 702.

Thomas J. Kline, Inc. v. Lorillard, Inc., 878 F.2d 791, 799 (4th Cir. 1989). Although the Federal Rules of Evidence have generally relaxed traditional barriers to expert opinion testimony, the Supreme Court has emphasized that Rule 702 "clearly contemplates some degree of regulation of the subjects and theories about which an expert may testify." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589, 113 S. Ct. 2786, 2795, 125 L. Ed. 2d 469, 480, (1993). In particular, the Court observed that Rule 702 permits an expert to testify only when "scientific, technical, or other specialized *knowledge will assist the trier of fact*," and that "the word 'knowledge' connotes more than subjective belief or unsupported speculation." *Id.* at 589-90, 113 S. Ct. at 2795, 125 L. Ed. 2d at 480-81.

Expert opinion is admissible as evidence in a summary judgment proceeding "only where it appears that the *affiant* is competent to give an expert opinion." *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 50 (1st Cir. 1990). A witness who lacks an appropriate educational background and lacks any training or other experience in the area of testimony is not qualified under Rule 702 as an expert witness. *See Thomas J. Kline*, 878 F.2d at 799-800 (witness who was not an economist, whose highest level of education was a masters degree in business administration, who had published only one article on an

unrelated topic, and who had no relevant work experience. was not qualified to testify as expert on credit decisions); *Doddy v. Oxy USA, Inc.*, 101 F.3d 448, 459 (5th Cir. 1996) (witness qualified to testify as an expert on procedures for treating oil and gas wells for corrosion not qualified to testify on issues related to chemical content and toxicity which were matters not within his field of expertise). To allow a witness to testify to matters beyond his expertise or of which he has no personal knowledge "would tend to mislead the jury by having an 'expert' testify to matters that are not within his field." *Doddy*, 101 F.3d at 459.

In the instant case, Mortimer has laid no foundation supporting his self-serving description of himself as an expert on redistricting. The affidavit on its face shows he lacks the relevant educational background, experience or other training to qualify as such an expert, and his various personal opinions and beliefs are inadmissible lay testimony which should not be considered by the Court. *See* discussion above at pp. 4-5, regarding the inadmissibility of conclusory and unsupported lay witness personal opinions and beliefs.

In addition to offering his various personal opinions and beliefs, Mortimer also attempts to offer expert testimony on the minimum percentage of black voting-age population needed in a Congressional district in North Carolina to achieve what he deems an equal electoral opportunity as a matter of law. *See* Mortimer Aff. at 9-17. Not only is Mortimer unqualified to

offer this particular analysis and legal conclusion, but he attempts to support his lay opinion by attaching to his affidavit a theoretical article on black representation by two political scientists. The inappropriateness of Mortimer's testimony on a theory of equal electoral opportunity for minorities arises not only from his lack of competence to present the theory, but also from the unvalidated nature of the theory itself. In order for expert testimony to be properly admitted, it must meet a two part test: (1) the expert testimony must consist of knowledge that is supported by appropriate validation; and (2) "the evidence or testimony must 'assist the trier of fact to understand the evidence or to determine a fact in issue.'" *Daubert*, 509 U.S. at 590-91, 113 S. Ct. at 2795, 125 L. Ed. 2d at 481. To determine whether certain expert evidence properly satisfies the first prong of the test, trial courts must consider whether the theory used by the expert can be, and has been, tested; whether the theory has been subject to peer review and publication; the known or potential rate of error of the method used; and the degree of the method's or conclusion's acceptance within the relevant scientific community. *Id.* at 593-94, 113 S. Ct. at 2796-97, 125 L. Ed. at 483. Even if testimony meets the first prong of the test, the Supreme Court has warned that in determining whether evidence meets the second prong of the test, judges must be mindful of other evidentiary rules which permit the exclusion of evidence when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury:

> Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses.

Id. at 595, 113 S. Ct. at 2798, 125 L. Ed. 2d at 484 (citations omitted). *See U.S. v. Dorsey*, 45 F.3d 809 (4th Cir. 1995) (no error to exclude testimony where the evidence offered did not meet either prong of the *Daubert* test).

In the case of Mortimer's affidavit, the affiant lacks knowledge or expertise regarding the methodology employed by the political scientists in devising a formula to calculate the minimum percentage of minorities theoretically necessary to assure an equal electoral opportunity. Although Federal Rule of Evidence 703 permits *experts* to rely on hearsay, this exception to the usual hearsay rules is allowed "because the expert's 'validation, expertly performed and subject to cross-examination, ought to suffice for judicial purposes.' " *Tk-7 Corp. v. Estate of Barbouti*, 993 F.2d 722, 732 (10th Cir. 1993) (quoting Rule 703, *Advisory Committee Notes*). However, that rationale is not satisfied where the so-called "expert" fails to demonstrate any basis for concluding that another individual's opinion on a subject is reliable, and where the so-called "expert" lacks familiarity with the methods and reasons underlying the other individual's projections, thereby

precluding any assessment of the validity of the projections through cross-examination. *Id.* It is the Court's duty to "make sure that the expert isn't being used as a vehicle for circumventing the rules of evidence." *In re James Wilson Assocs.*, 965 F.2d 160, 173 (7th Cir. 1992). "Scrutiny of expert testimony is especially proper where it consists of 'an array of figures conveying a delusive impression of exactness in an area where a [fact finder's] common sense is less available than usual to protect it.' " *Eastern Auto Distributors, Inc. v. Peugeot Motors of Am., Inc.*, 795 F.2d 329, 338 (4th Cir. 1986) (quoting *Herman Schwabe, Inc. v. United Shoe Mach. Corp.*, 297 F.2d 906, 912 (2d Cir. 1962)). The affiant Mortimer has not, and cannot, establish his qualification to offer expert testimony on a political science electoral theory; nor can he offer any expertise or knowledge to validate the electoral theory and projections of other persons on whom he relies as required by Rule 702. Under these circumstances, the testimony on election projections is inadmissible and Mortimer's affidavit cannot be relied on by the Court.

Finally, Mortimer also improperly cites to hearsay within hearsay from various newspaper articles, in addition to an article from the American Political Science review, to support his testimony. *See* Mortimer Aff. at 3 n.1, 6 n.2, 10 n.4, 11 (Exhibit B), and 13 (Exhibits C& D). Newspaper accounts of events are inadmissible hearsay, and their accounts of people's statements are hearsay within hearsay. *Horta v. Sullivan*, 4 F.3rd 2, 8 (1st Cir. 1993). *See also Mayor v.*

Educational Equality League, 415 U.S. 605, 618 n. 19, 94 S. Ct. 1323, 1332 n.19, 39 L. Ed. 2d 630, 643 n.19 (1974); *New England Mut. Life Ins. Co. v. Anderson*, 888 F.2d 646, 650-51 (10th Cir. 1989). Such hearsay evidence is inadmissible at trial and "cannot be considered on a motion for summary judgment." *Maryland Highway Contractors' Ass'n, Inc.*, 933 F.2d at 1251-52.

CONCLUSION

Plaintiffs have moved for summary judgment and defendants have cross-moved for summary judgment. Summary judgment is appropriate unless plaintiffs produce evidence that is sufficient to establish a reasonable probability of the existence of the essential elements of their claims. *Autry v. N.C. Dept. of Human Resources*, 820 F.2d 1384, 1386 (4th Cir. 1987); *Lovelace v. Sherwin-Williams*, 681 F.2d 230, 242 (4th Cir. 1982). Federal Rule of Civil Procedure 56(e) also demands that affidavits supporting or opposing a motion for summary judgment be made on personal knowledge, set forth facts admissible in evidence and show affirmatively that the affiant is competent to testify to the matters contained in the affidavit. Federal Rule of Evidence 702 requires that only experts qualified by knowledge, skill, experience, training or education are competent to give expert opinions. *Thomas J. Kline, Inc.*, 878 F.2d at 799. The five affidavits offered by plaintiffs fail to meet these basic requirements, and they must be struck and disregarded by the Court in determining the parties' summary judgment motions.

This the 2nd day of March, 1998.

MICHAEL F. EASLEY
ATTORNEY GENERAL

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AFFIDAVIT OF ROBINSON O. EVERETT (WITHOUT ATTACHMENT) (CD 56)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 4.96-CV-104-BO(3)

MARTIN CROMARTIE, *et al.*, Plaintiffs,	)
vs.	)
JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, *et al.*, Defendants.	)

AFFIDAVIT OF ROBINSON O. EVERETT

Robinson O. Everett, being duly sworn, deposes and declares as follows:

I am an attorney for the plaintiffs in this case; and previously I was a plaintiff in the *Shaw v. Hunt* litigation and also represented myself and my co-plaintiffs in that case at trial and on appeal. I was present during the entire trial that commenced late in March, 1994; and I cross-examined some of the defendants' witnesses in that case. One of those whom I cross-examined was Gerry Cohen, who had played a major role in the preparation of the 1992 congressional redistricting plan. Attached to this affidavit are pages 627-629 of the transcript of the trial, wherein is contained a portion of his trial testimony in

which I cross-examined him about an earlier deposition which he had given. As reflected in the attached pages of the transcript, he reaffirmed his earlier deposition testimony that 95% of the African-Americans registered to vote in "urban areas" in North Carolina were registered as Democrats and 97-98% in "rural areas" were registered as Democrats. During the trial I also cross-examined Representative Melvin Watt, Congressman from the Twelfth District; and as reflected in the attached pages 981-983 of the transcript. I questioned him about the estimated percentage of registration of African-Americans as Democrats. His opinion in that regard, as reflected in the attached transcript, was similar to Mr. Cohen's opinion that 95% or higher of the African-Americansregistered to vote in North Carolina are registered as Democrats. I do not recall any evidence given during the discovery process or at trial in *Shaw v. Hunt* that was inconsistent with the testimony of Cohen and Watt.

Further affiant sayeth not.

/s/ Robinson O. Everett

Subscribed and sworn to before me
this 23rd day of March, 1998.

/s/ Anita Robinson
Notary Public
My Commission expires: 10-28-2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 04-CV-104-H2

MARTIN CROMARTIE, et. al.	)
Plaintiffs,	)
	)
vs.	)
	)
JAMES B. HUNT, JR.	)
Defendant.	)

DECLARATION OF DR. RONALD E. WEBER

I. Ronald E. Weber, Ph.D., declare pursuant to 28 U.S.C. 1746 as follows:

1. I am currently the Wilder Crane Professor of Government in the Department of Political Science at the University of Wisconsin, Milwaukee, Wisconsin; President of Campaign and Opinion Research Analysts, Inc.; former co-editor of *The Journal of Politics* and Chairman of the Department of Political Science at the University of Wisconsin. Milwaukee; and former Fulbright Commission John Marshall Professor of Political Science at the Budapest University of Economic Sciences and the Central European University. Budapest. Hungary (1996-97). I received my B.A. in Political Science and History from Macalester College, St. Paul, MN. in

1964 and a Ph.D. in Political Science from Syracuse University in 1969, with specialties in American state politics, voting behavior, and quantitative analyses of political data. A copy of my curriculum vitae is attached as Exhibit A.

2. I am the author of numerous scholarly works on state political behavior, including several works on state legislative elections and voting behavior at the individual and aggregate levels of analysis. These works have appeared in such academic journals as the *American Political Science Review*, *The Journal of Politics*, *Midwest Journal of Political Science*, *Public Opinion Quarterly*, *American Politics Quarterly*, and *Legislative Studies Quarterly*.

3. I have been retained as a consultant and expert witness in a number of redistricting and voting rights cases and have been qualified as an expert by the U.S. District Courts in the Middle District (Northern and Southern Divisions) of Alabama, the Northern District (Tallahassee Division) and Middle District (Jacksonville Division) of Florida, the Southern District (Augusta Division) of Georgia, the Northern District (Eastern Division) of Illinois, the Eastern, Middle, and Western Districts of Louisiana, the District of Maryland, the District (Western Division) of Massachusetts, the Eastern District (Southern Division) of Michigan, the Northern District (Eastern and Western Divisions) of Mississippi, the Eastern District (Eastern Division) of Missouri, the District of Nebraska, the Southern District of New York, the Northern (Dallas Division),

Southern (Houston Division), and Western (Austin Division) Districts of Texas, the Eastern District of Virginia (Richmond Division), and the Eastern District of Wisconsin. I have given testimony by deposition in a number of cases, including a deposition for the plaintiffs in the Congressional redistricting case of *Shaw v. Reno*, n/k/a *Shaw v. Hunt* (Eastern District of North Carolina, Raleigh Division). I have testified in a number of Congressional and state legislative redistricting cases, including *Johnson v. Miller* (Southern District of Georgia, Augusta Division), *Vera v. Richards* (Southern District of Texas, Houston Division), *Hays v. State of Louisiana* (Western District of Louisiana, Shreveport Division), *Johnson v. Mortham* (Northern District of Florida, Tallahassee Division), *Moon v. Meadows* (Eastern District of Virginia, Richmond Division), *DeGrandy v. Wetherell* (Northern District of Florida, Tallahassee Division), *NAACP v. Austin*, (Eastern District of Michigan, Southern Division), and *Thomas v. Bush*, (Western District of Texas, Austin Division). A full listing of the cases in which I have testified in Federal court or I was deposed under oath is attached as Exhibit B. I also have extensive experience developing redistricting plans for local and state government clients and assisting them with preclearance of those plans under Section 5 of the U.S. Voting Rights Act of 1965, as amended in 1982.

4. I have been retained by plaintiffs in this case and am being compensated at the rate of $125 per hour plus out-of-pocket expenses. Neither the amount of my compensation nor

the fact that I am being compensated has altered the opinions that I have given and will give in this declaration and case.

5. I address the following questions in analyzing whether the 1997 U.S. Congressional redistricting in North Carolina results in a violation of the Fourteenth and Fifteenth Amendments of the U.S. Constitution in accord with factors set forth by the U.S. Supreme Court in *Shaw v. Reno*, *Miller v. Johnson*, *Shaw v. Hunt*, and *Bush v. Vera*:

(1) whether race was the predominant factor used by the state of North Carolina to draw the boundaries of the 1997 U.S. Congressional districts;
(2) whether the state of North Carolina in creating the U.S. Congressional districting plan subordinated traditional race-neutral districting principles, such as compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations;
(3) whether the African-American voting age population anywhere in North Carolina is sufficiently large and geographically concentrated enough to constitute a potential voter majority using traditional districting principles to draw a single-member Congressional district; and
(4) whether the majority-minority U.S. Congressional Districts 1 and 12 in the 1997 North Carolina plan is overly safe from the standpoint of giving a candidate of

choice of African-American voters an opportunity to be elected, thus questioning whether the plan was narrowly tailored to satisfy a compelling state interest.

6. The results of my analysis to date will be presented in this declaration in the following form: in Section I, I will outline briefly the history of Congressional districting in North Carolina since 1960; in section II, I will describe the analyses conducted to answer the first two questions and set forth my conclusions on those questions; in section III, I will describe the analyses conducted to answer the third question relating to size and concentration of African-American voters in North Carolina; and in section IV, I will discuss the electoral safeness of North Carolina Congressional districts 1 and 12. Tables, charts, and exhibits relevant to my analyses will be included within the body of the declaration or as attachments to this declaration.

FINDINGS

I. HISTORY OF RECENT CONGRESSIONAL REDISTRICTINGS IN NORTH CAROLINA

7. Following the 1960 Census of Population, the U.S. Congress in apportioning Congressional seats among the states decreased the size of the North Carolina Congressional delegation from 12 to 11 seats. Thus, the North Carolina General Assembly redistricted the state into a total of 11 districts in time for use in the 1962 elections. In this plan not

a single county was split across two Congressional districts. This plan was used in the 1962 and 1964 elections.

8. Following the U.S. Supreme Court decision in *Wesberry v. Sanders* (1964), the North Carolina Congressional districting plan was challenged in Federal court. A three-judge Federal panel held the plan unconstitutional in 1965 and ordered the North Carolina General Assembly to enact a constitutional Congressional districting plan by Jan. 31, 1966 (*Drum v. Sewell*, ___ F.Supp ___, M.D.N.C., 1965). The court order spurred the North Carolina General Assembly to redraw the Congressional districts in early 1966, reducing some population disparities among the districts. This plan, which the Federal court accepted only for use as an interim plan for use in the 1966 primary and general elections, did not split a single county in reducing the population disparities. The Federal Court ordered that the General Assembly adopt another plan by July 1, 1967 to further reduce the population disparities in the plan of January of 1966. A third Congressional districting plan for the 1960s was adopted by the North Carolina General Assembly on July 3, 1967 and received Federal Court approval later that month. Again, the General Assembly was able to achieve a plan that reduced population disparities while not splitting any counties. This plan was used in the 1968 and 1970 elections.

9. Based on the 1970 Census of Population, the 11 Congressional districts of North Carolina were out of balance

in population and the General Assembly had to adjust the populations of the 11 districts before the 1972 elections. In 1971, the General Assembly adopted a plan that did not divide any county and had a maximum population deviation of 3.8 percent. These districts were used in the elections of 1972-1980.

10. As was true following the 1970 Census of Population, the 1980 Census of Population revealed that the 11 districts of the 1970s were out of population balance. Thus, the North Carolina General Assembly had to adjust the populations of the 11 districts before the 1982 elections. The first plan adopted in July, 1981 did not receive pre-clearance under Section 5 by the U.S. Department of Justice. The General Assembly followed-up with a revised plan that satisfied the Department of Justice's objections in a special session of February, 1982. For the first time in the modern history of North Carolina, it was necessary to split four counties in order to balance the populations across the districts. Avery, Johnston, Moore, and Yadkin counties were each split across two districts. The town of Chapel Hill as well as the city of High Point were each split across two districts owing to the fact that those two places cross county lines and the General Assembly decided to draw the Congressional districts using county lines between Orange and Durham counties and between Guilford and Randolph counties. These 11 districts were used in the elections of 1982-1990.

11. The population of the state of North Carolina grew more rapidly than the U.S. as a whole between 1980 and 1990, and thus the Congressional apportionment following the 1990 Census of Population allocated an additional seat to North Carolina, bringing the size of the Congressional delegation back to 12 seats as it had been in the 1950s. I will not recount the history of General Assembly action in the early 1990s on Congressional districting as that has been extensively discussed in *Shaw v. Reno* (113 S.Ct. 2916, 1993) and *Shaw v. Hunt* (861 F. Supp 408, E.D.N.C., 1994; 116 S.Ct. 1894, 1996). Suffice it to say that the Congressional districting plan of the 1990s which was used in the 1992 and 1994 elections was invalidated by the *Shaw* challenge. The 1996 election was also held using these districts as the North Carolina General Assembly was given until the 1997 regular session to redraw the Congressional districts. The 1997 plan of the North Carolina General Assembly is under challenge in this action.

13. I conclude this section by making several observations. First, the sub-dividing of counties to achieve equally populated Congressional districts in North Carolina is a relatively recent occurrence, taking place for the first time with the splitting of just four counties in the early 1980s. Second, no county in North Carolina is large enough that it must of necessity be sub-divided to comply with the principle of "one-person, one-vote". Mecklenburg County, the largest county in population in North Carolina, is slightly smaller than a current Congressional district. Third, as a matter of principle

the number of counties that would need to be sub-divided to comply with "one-person, one-vote" is N-1 the number of Congressional districts. Thus, at the maximum a total of ten North Carolina counties might need to be split to create an equally populous plan, by using whole counties to create Congressional districts and then splitting just one county to balance the population between each of two districts. Fourth, despite the fact that the number of persons needed to populate an equitably populous plan increases each decade (after the 1980 Census the ideal district size was 534,706; after 1990 it was 552,386; and after 2000 it could be as high as 648,104 based on recent state population projections), the percentage of African-American persons in the North Carolina population declined between 1980 and 1990. As Professor Alfred W. Stuart's report for this case reveals, it is likely that the African-American percentage of the total state population will be less in 2000 that it was in 1990. Thus, as the average size of a Congressional district increases, the number of African-American persons of voting age available to constitute a majority of voters in a Congressional district does not increase as rapidly (I will return to this point more specifically later). Finally, as I will consistently point out below, the appropriate social science benchmark for comparison of the challenged plan is the plan of the 1980s (with 11 districts) and not the constitutionally invalidated 12 district plan of the 1990s. Thus, in my assessment of the challenged plan I will be making comparisons to the plan of the 1980s as well as to other Congressional districting plans of the 1990s from states whose

plans have been modified by Federal court order or revised by the state legislatures following invalidation by the Federal courts.

II. ANALYSIS OF DISTRICTING CRITERIA EMPLOYED BY STATE

14. The data needed to address the questions related to the role of race and adherence to race-neutral traditional districting principles was provided by counsel for the Plaintiffs. This material includes documents from the North Carolina General Assembly, special analyses provided by the General Assembly's Information Services Division, and reports and affidavits of both plaintiffs' and defendants' experts. In addition, data compiled by the U.S. Congressional Research Service and the U.S. Census Bureau are analyzed in my answers to these questions.

15. The question of whether race was the predominant factor used by the state of North Carolina to draw the boundaries of the U.S. Congressional districts in 1997 can be addressed by an examination of both tabular data prepared by the North Carolina Information Systems Division from data compiled by the U.S. Bureau of the Census and maps created on the computer facilities of the North Carolina General Assembly Legislative Services Office Redistricting System. Data from both sources are reported in tabular form and on maps to display the use of race as a redistricting criterion.

16. Tabular data showing how race acted as the predominant consideration in the creation of the 1997 plan for the North Carolina Congressional districts are reported in Tables 1 and 2. Table 1 reports for each 1997 North Carolina Congressional district the racial composition of the total population of the counties that were sub-divided in the creation of the plan using data from the County Split Assignments Report of March 26, 1997 of the North Carolina Information Systems Division. For both Districts 1 and 12 that were created to elect an African-American member of Congress, the county splits show a typical pattern of African-American total population majorities in the largest jurisdictions of each district. A total of 22 counties are split across the 12 districts and just one district (District 11) is composed of whole counties. Ten of the split counties are accounted for by the construction of District 1, while another six are accounted for by District 12. Six other counties are split in the plan. Half of the counties in District 1 are split, while 100 percent of the counties (all six) are split in the creation of District 12.

17. Turning first to District 1, six of the ten counties wholly within the district have African-American population majorities and the other four counties have African-American population percentages of at least 42 percent. The racial make-up of the parts of the ten sub-divided counties assigned to District 1 include four with parts over 50 percent African-American, four others with parts of over 40 percent African-American, and two with parts of over 30 percent African-

TABLE 1
Proportion of Total Population in Split Counties
by Congressional District for 1997 Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Beaufort	1	23,714	14,659	61.8	8,948	37.7
Craven	1	25,279	14,207	56.2	10,920	43.2
Granville	1	20,717	10,480	50.6	10,106	48.8
Jones	1	8,553	5,045	59.0	3,461	40.5
Lenoir	1	31,016	11,867	38.3	18,959	61.1
Person	1	21,001	13,436	64.0	7,307	34.8
Pitt	1	49,584	23,676	47.7	25,373	51.2
Washington	1	10,750	5,499	51.2	5,207	48.4
Wayne	1	36,323	17,110	47.1	18,781	51.7

TABLE 1 (Ctd.)
Proportion of Total Population in Split Counties
by Congressional District for 1997 Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Wilson	1	43,517	21,008	48.2	22,181	51.0
Granville	2	17,628	12,589	71.4	4,803	27.2
Sampson	2	22,745	14,114	62.1	7,985	35.1
Wake	2	185,642	118,648	63.9	62,515	33.7
Wilson	2	22,544	19,615	87.0	2,715	12.0
Beaufort	3	18,569	14,290	76.9	4,246	22.9
Craven	3	56,334	44,453	78.9	10,196	18.1
Jones	3	861	642	74.6	216	25.1
Lenoir	3	26,258	22,435	85.4	3,580	13.6

TABLE 1 (Ctd.)
Proportion of Total Population in Split Counties
by Congressional District for 1997 Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Pitt	3	58,340	46,967	80.5	10,548	18.1
Washington	3	3,247	2,057	63.4	1,159	35.7
Wayne	3	68,343	52,062	76.2	15,012	22.0
Chatham	4	29,239	22,800	78.0	6,112	20.9
Person	4	9,179	7,304	79.6	1,799	19.6
Wake	4	237,738	205,363	86.4	25,548	10.7
Alamance	5	79,976	60,647	75.8	18,544	23.2
Forsyth	5	206,766	181,381	87.7	22,997	11.1
Alamance	6	28,237	25,726	91.1	2,278	8.1

TABLE 1 (Ctd.)
Proportion of Total Population in Split Counties
by Congressional District for 1997 Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Chatham	6	9,520	6,623	69.6	2,733	28.7
Davidson	6	59,993	57,135	95.2	2,468	4.1
Guilford	6	211,363	186,331	88.2	21,541	10.2
Rowan	6	77,499	70,819	91.4	5,979	7.7
Cumberland	7	127,913	94,213	73.7	27,363	21.4
Robeson	7	81,548	29,364	36.0	17,204	21.1
Sampson	7	24,552	16,159	65.8	7,701	31.4
Cumberland	8	146,653	75,856	51.7	60,133	41.0
Robeson	8	23,631	8,622	36.5	8,981	38.0

TABLE 1 (Ctd.)
Proportion of Total Population in Split Counties
by Congressional District for 1997 Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Mecklenburg	9	292,808	264,604	90.4	21,026	7.2
Iredell	10	54,472	48,438	88.9	5,526	10.1
Davidson	12	66,684	56,161	84.2	9,846	14.8
Forsyth	12	59,112	15,537	26.3	43,105	72.9
Guilford	12	136,057	63,253	46.5	70,114	51.5
Iredell	12	38,459	28,769	74.8	9,343	24.3
Mecklenburg	12	218,625	100,047	45.9	113,442	51.9
Rowan	12	33,106	21,032	63.5	11,794	35.6

DECLARATION FOR RONALD WEBER, CONTINUED . . .

American. The African-American percentage of the total population in the counties split across District 1 and another district is above the district-wide African-American percentage in four counties. The African-American percentage of the total population is above 60 percent in Lenoir County and above 50 percent in Pitt, Wayne, and Wilson Counties. Conversely, Table 1 reports that the African-American percentage of the total population in the parts of most of those split counties assigned to another district than District 1 is consistently lower. For example, the part of Lenoir County assigned to District 3 is 13.6 percent African-American in total population, while the part of Pitt County allocated to District 3 is 18.1 percent African-American in total population. The county splits as they impact the white majority districts in eastern North Carolina can be divided into two categories: 1) those county splits for the districts where the intent usually was to provide African-American voters to shore up the electoral bases of candidates who might be characterized as candidates of choice of African-American voters (e.g. Districts 2 and 4), and 2) those county splits for the district where the intent usually was to carve out African-American voters so as not to endanger the electoral bases of the candidates who might not be characterized as candidates of choice of minority voters (e.g. District 3). Almost every time there was an opportunity to use race as the basis for dividing political subdivisions up politically, the North Carolina Congressional districting plan does it in the eastern part of the state.

18. Turning next to District 12, the racial make-up of the parts of the six sub-divided counties assigned to District 12 include three with parts over 50 percent African-American and three in which the African-American percentage is under 50 percent. Almost 75 percent of the total population in District 12 comes from the three county parts which are majority African-American in population. Mecklenburg, Forsyth, and Guilford counties which contribute almost 75 percent of the district's total population are located at the extremes of the district. The other three county parts (Davidson, Iredell, and Rowan) have narrow corridors which were designed to pick up as many African-American persons from each of those counties to fill out the district to an ideal sized district. A precinct level map of District 12 shows that all African-American majority precincts but one in those three counties have been assigned to the district. Conversely, Table 1 reports that the African-American percentage of the total population in the parts of those split counties assigned to another district than District 12 is consistently lower. For example, the part of Mecklenburg County assigned to District 9 is 7.2 percent African-American in total population, while the part of Forsyth County allocated to District 5 is 11.1 percent African-American in total population and the part of Guilford County assigned to District 6 is 10.2 percent African-American. The county splits as they impact the white majority districts adjacent to District 12 in the Piedmont are those county splits for the districts where the intent usually was to carve out African-American voters so as not to endanger the

electoral bases of the candidates who might not be characterized as candidates of choice of minority voters (e.g. Districts 5, 6, and 9). Almost every time there was an opportunity to use race as the basis for dividing political subdivisions up politically, the North Carolina Congressional districting plan does it in the Piedmont part of the state as well.

19. Table 2 provides further confirmation that race was the predominant factor in the drawing of the lines for the North Carolina Congressional districts in 1997. This table reports the exact same data as in Table 1 except that in Table 2 the data are organized by county rather than Congressional district. For example, the pattern shown in each of the ten counties that are split between District 1 and an adjacent district is one in which most of the time the sub-division was along racial lines. All ten counties were split along racial lines. The most dramatic examples from Table 2 include Lenoir County where 61.1 percent of the total population allocated to District 1 is African-American while only 13.6 percent of the total population assigned to District 3 is African-American, and Wilson County where 51.0 percent of the total population allocated to District 1 is African-American while only 12.0 percent of the total population assigned to District 2 is African-American. A similar pattern holds in the other eight counties of District 1. In each of those counties, the population on the District 1 side of the Congressional district line is more strongly African-American while being more strongly white on the other side of the line in an adjacent district.

TABLE 2
Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Alamance	5	79,976	60,647	75.8	18,544	23.2
Alamance	6	28,237	25,726	91.1	2,278	8.1
Beaufort	1	23,714	14,659	61.8	8,948	37.7
Beaufort	3	18,569	14,290	76.9	4,246	22.9
Chatham	4	29,239	22,800	78.0	6,112	20.9
Chatham	6	9,520	6,623	69.6	2,733	28.7
Craven	1	25,279	14,207	56.2	10,920	43.2
Craven	3	56,334	44,453	78.9	10,196	18.1
Cumberland	7	127,913	94,213	73.7	27,363	21.4

TABLE 2 (Ctd.)
Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Cumberland	8	146,653	75,856	51.7	60,133	41.0
Davidson	6	59,993	57,135	95.2	2,468	4.1
Davidson	12	66,684	56,161	84.2	9,846	14.8
Forsyth	5	206,766	181,381	87.7	22,997	11.1
Forsyth	12	59,112	15,537	26.3	43,105	72.9
Granville	1	20,717	10,480	50.6	10,106	48.8
Granville	2	17,628	12,589	71.4	4,803	27.2
Guilford	6	211,363	186,331	88.2	21,541	10.2
Guilford	12	136,057	63,253	46.5	70,114	51.5

TABLE 2 (Ctd.)
Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Iredell	10	54,472	48,438	88.9	5,526	10.1
Iredell	12	38,459	28,769	74.8	9,343	24.3
Jones	1	8,553	5,045	59.0	3,461	40.5
Jones	3	861	642	74.6	216	25.1
Lenoir	1	31,016	11,887	38.3	18,959	61.1
Lenoir	3	26,258	22,435	85.4	3,580	13.6
Mecklenburg	9	292,808	264,604	90.4	21,026	7.2
Mecklenburg	12	218,625	100,047	45.9	113,442	51.9
Person	1	21,001	13,436	64.0	7,307	34.8

TABLE 2 (Ctd.)
Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Person	4	9,179	7,304	79.6	1,799	19.6
Pitt	1	49,584	23,676	47.7	25,373	51.2
Pitt	3	58,340	46,967	80.5	10,548	18.1
Robeson	7	81,548	29,364	36.0	17,204	21.1
Robeson	8	23,631	8,622	36.5	8,981	38.0
Rowan	6	77,499	70,819	91.4	5,979	7.7
Rowan	12	33,106	21,032	63.5	11,794	35.6
Sampson	2	22,745	14,114	62.1	7,985	35.1
Sampson	7	24,552	16,159	65.8	7,701	31.4

TABLE 2 (Ctd.)
Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan (HB 586 -- Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Wake	2	185,642	118,648	63.9	62,515	33.7
Wake	4	237,738	205,363	86.4	25,548	10.7
Washington	1	10,750	5,499	51.2	5,207	48.4
Washington	3	3,247	2,057	63.4	1,159	35.7
Wayne	1	36,323	17,110	47.1	18,781	51.7
Wayne	3	68,343	52,062	76.2	15,012	22.0
Wilson	1	43,517	21,008	48.2	22,181	51.0
Wilson	2	22,544	19,615	87.0	2,715	12.0

20. The pattern shown in each of the six counties that are split between District 12 and an adjacent district is one in which most of the time the sub-division was along racial lines. All six counties were split along racial lines. The most dramatic examples from Table 2 include Forsyth County where 72.9 percent of the total population allocated to District 12 is African-American while only 11.1 percent of the total population assigned to District 5 is African-American, and Mecklenburg County where 51.9 percent of the total population allocated to District 12 is African-American while only 7.2 percent of the total population assigned to District 9 is African-American. Similarly, I find Guilford County where 51.5 percent of the total population allocated to District 12 is African-American while only 10.2 percent of the total population assigned to District 9 is African-American. A similar pattern holds in the other three counties of District 12. In each of those counties, the population on the District 12 side of the Congressional district line is more strongly African-American while being more strongly white on the other side of the line in an adjacent district. I can infer from these data that race was a predominant factor in the line drawing for Districts 1 and 12 and the adjacent districts in the 1997 North Carolina Congressional district plan.

21. I have also examined data related to city and town splits in 1997 North Carolina Congressional district plan. These data will be used to determine whether I should alter my opinion that race was a predominant factor in the construction

of the districts. Using a report titled Places Split by 97 North Carolina Congressional Districts prepared by Dan Frey, GIS Analyst, with the North Carolina General Assembly Information Systems Division, I created Tables 3 and 4. These tables are directly comparable to Tables 1 and 2. Note that these tables include every city or town in North Carolina that is split across two or more districts by geography in the 1997 plan. Thus, there are four places where the geographical split does not involve people on both sides of the line. Furthermore, there are several others where a small number of people are split away from a larger number of people by the use of the precincts in the 1997 Congressional districting plan.

22. According to Table 3, 11 of 13 cities or towns were split along racial lines to create Congressional district 1. Nine of the cities or towns split between district 1 and another district involve placing a majority of the African-American population into District 1 as displayed in Table 3. When cities or towns were split to achieve population equality, the racial composition of the components differ little. When the splits are for racial purposes, the differences are large.

23. A similar pattern of splitting cities or towns is shown for District 12. Nine of 13 cities or towns were split along racial lines to create Congressional district 12. Five of the cities or towns split between district 12 and another district involve placing a majority of the African-American population

TABLE 3
Proportion of Total Population in Split Municipalities and Census Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Ayden	1	4,590	2,186	47.6	2,404	52.4
Battleboro*	1	280	99	35.4	181	64.6
Fremont	1	1,638	784	47.9	854	52.1
Goldsboro	1	25,734	9,833	38.2	15,901	61.8
Greenville	1	19,249	6,052	31.4	13,197	68.6
Kinston	1	16,328	2,968	18.2	13,360	81.8
New Bern	1	13,921	7,201	51.7	6,720	48.3
Rocky Mount	1	17,057	2,584	15.1	14,473	84.9
Sharpsburg*	1	482	91	18.9	391	81.1

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Trent Woods	1	299	299	100.0	0	0.0
Washington	1	9,073	4,915	54.2	4,158	45.8
Whitakers*	1	464	183	39.4	281	60.6
Wilson	1	26,127	9,355	35.8	16,772	64.2
Battleboro*	2	167	156	93.4	11	6.6
Clinton	2	7,313	4,024	55.0	3,289	45.0
Garner	2	3,008	2,232	74.2	776	25.8
Raleigh	2	107,979	60,848	56.4	47,131	43.6
Rocky Mount	2	31,940	22,116	69.2	9,824	30.8

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Sharpsburg*	2	1,054	861	81.7	193	18.3
Whitakers*	2	396	233	58.8	163	41.2
Wilson	2	10,803	10,249	94.9	554	5.1
Ayden	3	150	150	100.0	0	0.0
Fremont	3	72	10	13.9	62	86.1
Goldsboro	3	14,975	11,562	77.2	3,413	22.8
Greenville	3	25,723	23,583	91.7	2,140	8.3
Kinston	3	8,967	7,712	86.0	1,255	14.0
Mount Olive*	3	4,581	2,117	47.5	2,404	52.5

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
New Bern	3	3,442	2,500	75.5	843	24.5
Surf City*	3	317	314	99.1	3	0.9
Trent Woods	3	2,067	2,067	100.0	0	0.0
Washington	3	2	2	100.0	0	0.0
Garner	4	11,959	10,102	84.5	1,857	15.5
Mebane*	4	485	420	86.6	65	13.4
Raleigh	4	99,973	89,744	89.8	10,229	10.2
Burlington	5	36,339	27,580	75.9	8,759	24.1
Elkin*	5	3,720	3,373	90.7	347	9.3

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Gibsonville*	5	1,480	1,332	90.0	148	10.0
Graham	5	7,234	5,857	81.0	1,377	19.0
High Point	5	6	6	100.0	0	0.0
Kernersville	5	10,836	10,230	94.4	606	5.6
Mebane*	5	4,269	3,382	79.2	887	20.8
Winston-Salem	5	89,215	74,885	83.9	14,330	16.1
Burlington	6	3,159	3,009	95.3	150	4.7
Gibsonville*	6	1,961	1,483	75.6	478	24.4
Graham	6	3,192	2,896	90.7	296	9.3

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Greensboro	6	88,441	78,981	89.3	9,460	10.7
High Point	6	37,200	32,833	88.3	4,367	11.7
Kannapolis	6	8,476	7,149	84.3	1,327	15.7
Kernersville	6	0	0	0.0	0	0.0
Lexington	6	2,885	2,522	87.4	363	12.6
Salisbury	6	5,250	4,442	84.6	808	15.4
Spencer	6	8	6	75.0	2	25.0
Thomasville	6	6,909	6,249	90.4	660	9.6
Clinton	7	891	720	80.8	171	19.2

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Fayetteville	7	44,988	34,279	76.2	10,709	23.8
Mount Olive*	7	1	0	0.0	1	100.0
Red Springs	7	58	58	100.0	0	0.0
Surf City*	7	653	662	99.8	1	0.2
Fayetteville	8	30,707	12,437	40.5	18,270	59.5
Kannapolis	8	21,220	17,205	81.1	4,015	18.9
Red Springs	8	3,736	1,771	47.4	1,965	52.6
Weddington*	8	3,803	3,695	97.2	108	2.8
Charlotte	9	213,515	196,172	91.9	17,343	8.1

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Cornelius	9	308	304	98.7	4	1.3
Weddington*	9	0	0	0.0	0	0.0
Davidson*	10	0	0	0.0	0	0.0
Elkin	10	70	62	88.6	8	11.4
Mooresville	10	0	0	0.0	0	0.0
Statesville	10	12,324	9,997	81.1	2,327	18.9
Troutman	10	1,419	1,024	72.2	395	27.8
Charlotte	12	182,419	73,935	40.5	108,484	59.5
Cornelius	12	2,273	1,752	77.1	521	22.9

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Davidson*	12	4,046	3,407	84.2	639	15.8
Greensboro	12	95,080	42,236	44.4	52,844	55.6
High Point	12	32,290	15,677	48.6	16,613	51.4
Lexington	12	13,696	9,143	66.8	4,553	33.2
Mooresville	12	8,818	6,687	75.8	2,131	24.2
Salisbury	12	17,837	10,521	59.0	7,316	41.0
Spencer	12	3,211	2,488	77.5	723	22.5
Statesville	12	5,243	1,290	24.6	3,953	75.4
Thomasville	12	9,006	5,246	58.3	3,760	41.7

TABLE 3 (Ctd.)
Proportion of Total Population in Split Municipalities and Census Designated Places by Congressional District for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Troutman	12	74	74	100.0	0	0.0
Winston-Salem	12	54,270	12,272	22.6	41,998	77.4

* City or town is split across a county boundary.

Source: North Carolina General Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

TABLE 4
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Ayden	1	4,590	2,186	47.6	2,404	52.4
Ayden	3	150	150	100.0	0	0.0
Battleboro*	1	280	99	35.4	181	64.6
Battleboro*	2	167	156	93.4	11	6.6
Burlington	5	36,339	27,580	75.9	8,759	24.1
Burlington	6	3,159	3,009	95.3	150	4.7
Charlotte	9	213,515	196,172	91.9	17,343	8.1
Charlotte	12	182,419	73,935	40.5	108,484	59.5
Clinton	2	7,313	4,024	55.0	3,289	45.0

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Clinton	7	891	720	80.8	171	19.2
Cornelius	9	308	304	98.7	4	1.3
Cornelius	12	2,273	1,752	77.1	521	22.9
Davidson*	10	0	0	0.0	0	0.0
Davidson*	12	4,046	3,407	84.2	639	15.8
Elkin*	5	3,720	3,373	90.7	347	9.3
Elkin*	10	70	62	88.6	8	11.4
Fayetteville	7	44,988	34,279	76.2	10,709	23.8
Fayetteville	8	30,707	12,437	40.5	18,270	59.5

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Fremont	1	1,638	784	47.9	854	52.1
Fremont	3	72	10	13.9	62	86.1
Garner	2	3,008	2,232	74.2	776	25.8
Garner	4	11,959	10,102	84.5	1,857	15.5
Gibsonville*	5	1,480	1,332	90.0	148	10.0
Gibsonville*	6	1,961	1,483	75.6	478	24.4
Goldsboro	1	25,734	9,833	38.2	15,901	61.8
Goldsboro	3	14,975	11,562	77.2	3,413	22.8
Graham	5	7,234	5,857	81.0	1,377	19.0

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Graham	6	3,192	2,896	90.7	296	9.3
Greensboro	6	88,441	78,981	89.3	9,460	10.7
Greensboro	12	95,080	42,236	44.4	52,844	55.6
Greenville	1	19,249	6,052	31.4	13,197	68.6
Greenville	3	25,723	23,583	91.7	2,140	8.3
High Point	5	6	6	100.0	0	0.0
High Point	6	37,200	32,833	88.3	4,367	11.7
High Point	12	32,290	15,677	48.6	16,613	51.4
Kannapolis	6	8,476	7,149	84.3	1,327	15.7

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Kannapolis	8	21,220	17,205	81.1	4,015	18.9
Kernersville	5	10,836	10,230	94.4	606	5.6
Kernersville	6	0	0	0.0	0	0.0
Kinston	1	16,328	2,968	18.2	13,360	81.8
Kinston	3	8,967	7,712	86.0	1,255	14.0
Lexington	6	2,885	2,522	87.4	363	12.6
Lexington	12	13,696	9,143	66.8	4,553	33.2
Mebane*	4	485	420	86.6	65	13.4
Mebane*	5	4,269	3,382	79.2	887	20.8

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Mooresville	10	0	0	0.0	0	0.0
Mooresville	12	8,818	6,687	75.8	2,131	24.2
Mount Olive*	3	4,581	2,177	47.5	2,404	52.5
Mount Olive*	7	1	0	0.0	1	100.0
New Bern	1	13,921	7,201	51.7	6,720	48.3
New Bern	3	3,442	2,599	75.5	843	24.5
Raleigh	2	107,979	60,848	56.4	47,131	43.6
Raleigh	4	99,973	89,744	89.8	10,229	10.2

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Red Springs	7	58	58	100.0	0	0.0
Red Springs	8	3,736	1,771	47.4	1,965	52.6
Rocky Mount	1	17,057	2,584	15.1	14,473	84.9
Rocky Mount	2	31,940	22,116	69.2	9,824	30.8
Salisbury	6	5,250	4,442	84.6	808	15.4
Salisbury	12	17,837	10,521	59.0	7,316	41.0
Sharpsburg*	1	482	91	18.9	391	81.1
Sharpsburg*	2	1,054	861	81.7	193	18.3

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Spencer	6	8	6	75.0	2	25.0
Spencer	12	3,211	2,488	77.5	723	22.5
Statesville	10	12,324	9,997	81.1	2,327	18.9
Statesville	12	5,243	1,290	24.6	3,953	75.4
Surf City*	3	317	314	99.1	3	0.9
Surf City*	7	653	652	99.8	1	0.2
Thomasville	6	6,909	6,249	90.4	660	9.6
Thomasville	12	9,006	5,246	58.3	3,760	41.7

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census
Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Trent Woods	1	299	299	100.0	0	0.0
Trent Woods	3	2,067	2,067	100.0	0	0.0
Troutman	12	74	74	100.0	0	0.0
Troutman	10	1,419	1,024	72.2	395	27.8
Washington	1	9,073	4,915	54.2	4,158	45.8
Washington	3	2	2	100.0	0	0.0
Weddington *	8	3,803	3,695	97.2	108	2.8

TABLE 4 (Ctd.)
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan (HB 586 -- Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Weddington *	9	0	0	0.0	0	0.0
Whitakers*	1	464	183	39.4	281	60.6
Whitakers*	2	396	233	58.8	163	41.2
Wilson	1	26,127	9,355	35.8	16,772	64.2
Wilson	2	10,803	10,249	94.9	554	5.1
Winston-Salem	5	89,215	74,885	83.9	14,330	16.1
Winston-Salem	12	54,270	12,272	22.6	41,998	77.4

* City or town is split across a county boundary.

Source: North Carolina General Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

into District 12 as displayed in Table 3. Also the four largest cities assigned to District 12 are split along racial lines.

24. The above analysis is further confirmed by the listing of split cities and towns in Table 4. Here one can see how most of the cities and towns assigned to District 1 are split along racial lines. Particularly striking are the figures for Goldsboro, Greenville, Kinston, Rocky Mount, and Wilson. Table 4 also highlights the racial splits of the cities or towns assigned to District 12. Again the difference in the figures for Charlotte, Greensboro, High Point, Statesville, and Winston-Salem are large. On the other hand, many of the cities and towns split between other districts do not display large racial differences (exceptions are Fayetteville and Raleigh).

25. Defendants' experts point out that the 1997 North Carolina Congressional districting plan relies almost without exception to the 1990 Voting Tabulation Districts (VTDs) or precincts as the building blocks for constructing districts. They note that only two precincts were split in constructing the 12 districts. One of these two precincts is in Mecklenburg County and was split to provide a geographical land bridge to connect two parts of District 9 to each other. The precinct in discussion is Charlotte Precinct 77 and extends to the southern county boundary and the state line with South Carolina. The precinct is a predominantly African-American majority precinct and the bulk of the people was needed to create a race-based District 12. Thus, the state split the precinct

placing one non-African-American person in the part of the precinct in District 9. If that one person is a registered voter and does vote in a Congressional election, there will be a ballot secrecy issue for that one voter. The other split precinct is in Craven County where 23 persons are put in District 3 rather than District 1 with remainder of the precinct's residents.

26. The discussion of not splitting precincts by defendants' experts misunderstands how racially homogeneous precincts are today in North Carolina and other parts of the nation. For example, both Georgia and South Carolina, split only a small number of precincts in creating their Congressional Districting plans of the 1990s but this fact did not prevent plaintiffs from invalidating Districts 2 and 11 in Georgia and from attacking District 6 in North Carolina. Louisiana did not split a single precinct in the creation of the two plans invalidated by the *Hays* court in the Western District of Louisiana. Thus, given the homogeneous racial character of precincts in North Carolina, it is quite possible to draw districts in which race predominates using whole precincts.

27. I began to answer the question of whether the districts in the 1997 North Carolina Congressional districting plan subordinate race-neutral traditional redistricting principles when I discussed above the tabular data on the splitting of counties, cities, and towns. The state of North Carolina subordinated the splitting of county, city, and town boundaries to a desire to allocate persons by race to a greater extent than

necessary to comply with the one-person, one-vote standard of population equality. This was particularly true in the drawing of Districts 1 and 12 as well as adjacent districts. A total of 22 counties and 41 cities and towns were split in the drawing of the 1997 North Carolina Congressional districting plan, for a total of 63 split political subdivisions. Only six counties and 15 cities and towns were split to create the other districts (several of the cities and towns were split because they are on a county boundary and different counties were assigned to different districts). In the recent past no counties had been split to create the 11 districts of the 1960s and 1970s, while just four had been split to construct the 11 districts of the 1980s. The maximum number of counties needed to be split to fashion an 12 district plan is 11, allowing for one county to be split between each two districts.

28. A report by David C. Huckabee, "Congressional Districts: Objectively Evaluating Shapes," *CRS Report for Congress* (Washington: Congressional Research Service, The Library of Congress), May 24, 1994, also contains information from other states to compare with the experience of North Carolina in Congressional districting. Recall that North Carolina's Congressional District 1 in the 1997 plan has 20 counties, ten of which were split with another district (50 percent) and that District 12 has six counties, all six of which are split (100.0 percent). This Huckabee report as well as subsequent data reveals that nationwide, only the original Florida 3, the original Georgia 2, the original and revised

Louisiana districts 4, the original Louisiana 5 and 6, the current South Carolina 6, and the original Virginia 3 have a greater number of split parishes or counties than North Carolina District 1. Original Louisiana district 4 had 24 split parishes, original Florida district 3 had 14 split counties, revised Louisiana district 4 had 13 split parishes, original Georgia district 2 had 12 split counties, and original Louisiana 5 and 6 as well as current South Carolina 6 and original Virginia 3 had/have 11 split counties. All of these listed districts but South Carolina 3 have been invalidated by the Federal courts.

29. Huckabee also provides information on the percentage of split counties allocated to the Congressional districts of the 1990s. There are a large number of Congressional districts from around the nation which have 100 percent of the counties split which are allocated to a district. Most of these are plans involving splits of large counties in the metropolitan areas of the country and these plans are not comparable to the North Carolina setting. No single district in the country is like North Carolina 12 in splitting as many as six counties and sub-dividing 100 percent of them.

30. Huckabee also provides information on the number of places having populations of 10,000 or more and indicates how many of these are split by district lines. In the 1997 plan, North Carolina district 1 has nine such places (either cities or towns, and six of them are divided between district 1 and another district. District 12 has eight cities or towns

10,000 or more in population, and all eight of them are split between districts.

31. Another race-neutral traditional redistricting criterion involves the issue of geographical contiguity. I have examined the maps of the 1997 Congressional districting plan to determine whether the state adhered to geographical contiguity in the construction of the plans. I find that the plans are technically contiguous in that parts of geographical territories are joined together through water areas or narrow land bridges. A person wishing to traverse Congressional district 3 by automobile, for example, would have to leave the district, then go through another district, before returning to district 3. The best examples of technical contiguity occur in Beaufort and Pamlico counties where two parts of district 3 are joined across the Pamlico Sound, in the city of Charlotte where two parts of district 9 are connected through a split precinct at the southern edge of Mecklenburg County, and in Guilford County and the city of High Point where a narrow land bridge is used to connect Davidson County with the city of Greensboro in Guilford County. Although the Congressional districts are technically contiguous, the district lines do not promote functional contiguity. Anyone serving districts 3, 9, and 12 in the U.S. Congress will need to travel usually outside each district in order to traverse the district each is serving in the most efficient manner.

32. Another race-neutral traditional redistricting principle involves the issue of geographical compactness. The issue of geographical compactness can be addressed first by examining maps of the 1997 Congressional districts. A statewide map of the 1997 districts and detailed maps of Districts 1 and 12 demonstrate clearly that Districts 1 and 12 as well as adjacent districts are oddly shaped and not compact.

33. A second way to assess the compactness of a Congressional district is to use a variety of compactness measures now standard in political science. These measures are reported upon in two works--1) Richard H. Pildes and Richard G. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after *Shaw*," *Michigan Law Review*, Vol. 92 (December 1993), pp. 101-205, and 2) David C. Huckabee, "Congressional Districts: Objectively Evaluating Shapes," *CRS Report for Congress* (Washington: Congressional Research Service, The Library of Congress), May 24, 1994. The actual computations of the compactness scores reported in these two works were conducted by Kimball Brace and Douglas Chapin of Election Data Services, Inc., Washington, D.C.

34. Three measures of compactness are reported in the Huckabee report for all 435 Congressional districts in the U.S. adopted following the release of the 1990 Census of Population. Huckabee adopts two geographic measures--a dispersion measure and a perimeter measure -- and one

population measure. Pildes and Niemi rely on the same two geographic compactness measures reported by Huckabee. Gerald Webster in his report for the defendants in this case use the same two geographic compactness measures as Pildes and Niemi as well as Huckabee.

35. Combining information about the two measures of geographical compactness in the Huckabee report with those in the Webster report I can see that North Carolina's Congressional District 12 is still the least compact district in North Carolina on both indicators of geographic compactness and that District 1 is the second least compact district on the perimeter measure and the fourth least compact district on the dispersion measure. In Appendix E of the Huckabee report, he reports a table containing the two geographic compactness scores for the bottom ten percent of Congressional districts in the nation. Using the criterion of having at least one compactness score in the bottom ten percent, North Carolina 12 would clearly continue in that compilation while North Carolina 1 would probably not make the list of the worst ten percent of the districts even though many of the lowest districts in Huckabee's table have moved up to higher scores will revised districts. A number of Congressional districts in other states with lower perimeter or dispersion scores have been found to be unconstitutional by Federal district courts. North Carolina 12 is less compact than struck-down Florida 3 on one indicator, than invalidated Georgia districts 2 and 11 on both indicators, than unconstitutional Louisiana 4 on one indicator,

than invalidated New York 12 on one indicator, than struck-down Texas districts 18, 29, and 30 on one indicator, and unconstitutional Virginia 3 on both indicators. I have also taken the perimeter and dispersion compactness scores from the Huckabee report and revised the ranking order for the worst districts on each measure (this process has used the best information on the two compactness scores for the current Congressional districts, some of which is contained in the Webster report). North Carolina 12 ranks either 430 or 431 out of 435 in compactness using the dispersion measure (I am unable to determine whether the state of New York increased the compactness of District 8 when it recently reworked is plan to remedy the unconstitutionality of District 12). North Carolina 12 ranks either 432 or 433 of 435 in compactness using the perimeter measure. Thus, North Carolina 12 continues to be the least compact district in North Carolina and among the worst in the nation in terms of geographical compactness.

36. Pildes and Niemi report geographic compactness scores for the Congressional districts of the 1980s using the dispersion and perimeter measures. These scores for the old 11 districts in North Carolina are used to compare to the scores for the current 12 districts in the 1997 plan.[1] The range on the

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[1]Richard H. Pildes and Richard G. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after *Shaw*," *Michigan Law Review*, Vol. 92 (December 1993), Table 6, pp. 189-91.

dispersion measure in North Carolina runs from a low of .26 to a high of .57 and averages .36 across the 11 districts in the 1980s. In the 1997 plan, the range on the dispersion measure runs from a low of .11 to a high of .62 and averages .35 across the current 12 districts. The range on the perimeter measure in North Carolina runs from a low of .22 to a high of .46 and averages .30 across the 11 districts in the 1980s. In the 1997 plan, the range on the perimeter measure runs from a low of .04 to a high of .33 and averages .19 across the current 12 districts. This comparison reveals that the 1997 12 district plan is less compact overall than the 11 district plan of the 1980s, using the two standard measures of geographic compactness.

37. A final race-neutral traditional redistricting criterion involves the issue of regional communities of interest. I have examined a map of the regions of North Carolina included in the Stuart report for this case (Figure 5). One of the clearest distinctions is between the Tidewater, Inner Coastal Plains, and Piedmont areas of North Carolina. Thus, current Congressional district 1 is in two principal community of interest regions of North Carolina. On the other hand, current District 12 includes parts of six counties all in the Piedmont Region. Thus, traditional regional communities of interest were merged in the construction of district 1 in the current North Carolina Congressional districting plan.

38. To sum up my conclusions about the predominant use of race and the subordination of race-neutral

traditional districting principles to race by the state of North Carolina in the creation of the Congressional districts in 1997, I find that a significant number of persons are assigned to districts in eastern North Carolina and the Piedmont Region based on race. I conclude that race was a predominant factor in the construction of Districts 1, 3, 9, and 12. To a lesser extent race also affected the drawing of Districts 5, 6, and 10 in that certain counties in those districts were split on a racial basis. I also conclude that race-neutral traditional districting principles were subordinated in the creation of these districts. The state of North Carolina did not adhere to compactness in creating the districts, more counties, cities, and towns were split than needed in constructing the districts, and community of interest regions were not followed in the design of the districts. I found districts 3, 9, and 12 to be only technically contiguous, and that those three districts were not functionally contiguous.

III. NUMEROSITY AND CONCENTRATION OF AFRICAN-AMERICAN VOTERS

39. I conclude that the African-American voting age population in no part of North Carolina is sufficiently numerous or geographically compact enough to be a majority of voters using traditional districting principles to draw a single-member Congressional district. An equitably populated Congressional district in North Carolina needs a total population of about 552,386 persons using 1990 Census of Population data. First, an examination of maps and statistical

data at the county, city, and precinct levels by race indicates that there are is only one potential area where one might locate enough African-American persons of voting age to create a geographically compact district. The area is in the northeastern part of the state located primarily among the counties of the Inner Coastal Plain region.

40. The best evidence of the difficulty of constructing such an African-American majority district is contained in material from the 1997 Section 5 submission of North Carolina. This material indicates that current Congressional district 1 does not contain either a majority of the voting age population or of registered voters who are African-American. The African-American VAP for District 1 is 46.54 percent and the African-American percentage of the registered voters in the district is 44.89 percent. I presume that if the General Assembly could have created a voting age population majority-minority district in northeastern North Carolina it would have done so. There are no large cities in the Inner Coastal Plain region from which to draw a sufficient number of African-American persons to readily construct a majority-minority Congressional district (contrast North Carolina cities with Atlanta, Birmingham, New Orleans, and Memphis where large African-American population concentrations exist). Thus, not enough African-American persons reside in the either the Inner Coastal Plain region to make up a majority of the eligible voters in a single-member district for Congress.

IV. ELECTORAL SAFENESS OF THE CONGRESSIONAL DISTRICTS 1 AND 12

41. To assess the electoral safety of Congressional Districts 1 and 12 in the North Carolina Congressional districting plan of 1997, I use electoral history included in the reports of plaintiffs' expert Lee Mortimer and defendants' expert David W. Peterson. In my scholarly work on state legislative elections, I consider any election in which one candidate gets 60 percent or more of the total vote among two candidates as being a non-competitive election. Elections won by less than 60 percent are considered competitive. Students of congressional elections generally adopt the same threshold for distinguishing non-competitive from competitive elections.

42. Using electoral history data from the Peterson report for Congressional district 12, I find that within the boundaries of the district that Peterson estimates that Democratic candidates won over 60 percent of the vote in two 1988 elections and the 1990 U.S. Senate election between Jesse Helms and Harvey Gantt. All of these percentages exceed the level needed to have a competitive Congressional district. These three percentages all confirm that district 12 is overly safe for both white and African-American candidates of the Democratic party in general elections.

43. I have also double-checked the calculations reported for recent elections in the Mortimer report. Using

whole county statistics, I confirm that Mortimer's report is correct. For example, I find that the Democratic candidate for Auditor Campbell, an African-American, won 63.5 percent of the vote in the 18 counties of northeastern North Carolina outlined in Exhibit E of the Mortimer report. This finding suggests that Congressional District 1 is also overly safe.

44. I have also analyzed the 1990 U.S. Senate Democratic primaries and general elections as well as the 1992 State Auditor Democratic primaries and general elections to estimate how much white cross-over is available to African-American candidates running statewide. I have isolated the analyses down to just the precincts contained in the 20 whole counties assigned to District 1 and the six whole counties assigned to District 12. Thus, I have consciously included adjacent areas not assigned to either District to achieve a conservative estimate of white cross-over.

45. For the 20 counties of the area of District 1, this analysis shows that white cross-over for an African-American candidate ranges from four to 35 percent in Democratic primaries and from 23 to 44 percent in general elections. The figures for the six counties of the area in District 12 show estimated white cross-over to range from 28 to 42 percent in Democratic primaries and from 37 to 38 percent in general elections. These white cross-over figures confirm that usually Democratic candidates who happen to be African-American can win enough white cross-over support to go along with

African-American voter support to win comfortably and safely in the areas of Districts 1 and 12 of the current North Carolina Congressional districting plan.

CONCLUSION

46. On the basis of my above analysis, I conclude:

1) that race was the predominant factor used by the state of North Carolina to draw the boundaries of the 1997 U.S. Congressional districts;

(2) that the state of North Carolina in creating the 1997 U.S. Congressional districting plan subordinated traditional race-neutral districting principles, such as compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations;

(3) that the African-American voting age population in North Carolina (particularly the northeastern part of the state) is not sufficiently large nor geographically concentrated enough to constitute a potential voter majority using traditional districting principles to draw a single-member Congressional district;

(4) that the majority-minority U.S. Congressional Districts 1 and 12 in the 1997 North Carolina plan is overly safe from the standpoint of giving a candidate of choice of African-American voters an opportunity to be elected, thus questioning whether the plan was narrowly tailored to satisfy a compelling state interest.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on this twenty third day of March, 1998.

/s/ Ronald E. Weber

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
Eastern Division
Civil Action No. 04-CV-104-H2

MARTIN CROMARTIE, *et al.*,	)
	)
v.	)
	)
JAMES B. HUNT, JR., in his capacity as governor	)

AFFIDAVIT OF THOMAS A. DARLING

Thomas A. Darling, being first duly sworn, deposes and says:

1. I have a Ph.D. (1994) in Public Administration and Policy from the University at Albany, State University of New York. From 1996 to the present, I have been Assistant Professor of Government and Public Administration at the University of Baltimore. I also presently serve as Director, Government and Technology, at the William Donald Schaefer Center for Public Policy at the University of Baltimore. From 1994 to 1996, I was a Research Associate with the New York State Forum for Information Resources Management at the Rockefeller Institute of Government where I headed a project related to the electronic transmission of voter registration information and election results. I am co-author of three

articles in professional refereed journals. A current copy of my *curriculum vitae* is attached.

2. For the past two years, I have been working on a study of racial gerrymandering in the wake of *Shaw v. Reno*. My colleagues in this research are Dr. Carmen Cirincione, Assistant Professor of Political Science at the University of Connecticut and Dr. Timothy G. O'Rourke, Teresa M. Fischer Professor of Citizenship Education at the University of Missouri-St. Louis. To date, we have written three conference papers on our research, have one article under submission to a professional journal, and are preparing a second article for submission. Points 3 through 4 describe portions of this research as it relates specifically to North Carolina and these points are jointly subscribed to by my research colleagues in separate affidavits.

3. Drawing on the Supreme Court's racial gerrymandering jurisprudence (as set out in *Shaw I* and *II*, *Miller*, *Bush*, and *Abrams*), my colleagues and I have sought to answer the following question: What is the likelihood that a challenged district, with a given racial configuration, would emerge from a redistricting process that selected plans on the basis of traditional, race-neutral criteria? In a paper presented at the 1997 Annual Meeting of the American Political Science Association, we offered a computer-intensive methodology to answer this question. We applied the methodology to the analysis of 1991-92 congressional redistricting in five states: Alabama, Georgia, Mississippi, North Carolina, and South

Carolina. Attached to Dr. Cirincione's affidavit in this matter is a true copy of this paper, entitled "Does the Supreme Court Have It Right? Toward a Quantitative Standard for Evaluating Congressional Redistricting Plans After *Shaw v. Hunt* and *Bush v. Vera*." Paragraphs a-g below summarize the findings of the paper as they relate to the unconstitutional 1992 North Carolina congressional redistricting plan.

a. The methodology relies on computer programs, or algorithms, that are designed to create, at random, literally thousands of congressional districting plans for a given state. Our study uses four algorithms, each of which incorporates a different set of traditional districting criteria into the map drawing process. The *contiguity algorithm*, as the name suggests, creates contiguous districts of equal population -- building districts piece by piece, using census block groups as the basic unit of construction. (There are about 5,700 census block groups in North Carolina.) The *county integrity algorithm*, attempts to create districts that avoid dividing counties. The *compactness algorithm* ignores jurisdictional integrity and, instead, attempts to draw districts that are reasonably compact; for our purposes, that means districts that look like rectangles or boxes. The *county integrity and compactness* algorithm seeks to create compact districts comprised of whole counties (with county integrity given greater weight than compactness).

b. For each of the five states in our study, we generated 5,000 plans for each of the four algorithms. These 100,000 plans, with 820,000 districts provide a baseline against which we can judge redistricting plans actually adopted. Because our algorithms do not take race into account, their results can be used to assess whether an "adopted plan" has, in fact, subordinated traditional criteria to race. By comparing an adopted plan to randomly generated plans, we can estimate the likelihood that a plan with a specific number of black majority districts would emerge from a race-neutral redistricting process. If, for a particular state, the computer-generated plans do not contain as many black majority districts as the adopted plan, we can infer that the real mapmakers had to undertake a concerted effort to find such districts. Equally important, we can also assess whether an adopted plan elevates race over traditional criteria by comparing the characteristics of the adopted plan -- with respect, say, to county integrity and compactness -- to the characteristics of randomly generated plans. We assume that an adopted plan has been driven by racial considerations if it performs significantly worse on traditional criteria than the plans generated by our race-neutral algorithms.

c. For North Carolina, our study produced 5,000 plans for each of the four algorithms. Of the 240,000 districts in the 20,000 computer-generated districting plans, none is a majority African American majority district. In fact, the closest our algorithms came to producing a majority black district is a plan with a district containing a 47.1 percent black population (43.9

percent voting age population). Overall, 6,180 of the 20,000 the computer-generated plans contained a single African American influence district -- defined as one in which 40 percent or more of the population is African American. None of the computer-generated plans contained more than one influence district. It is clear that race was a factor in drawing the congressional districting plan in North Carolina. It is very difficult to draw a plan containing one, let alone two majority African American districts without considering race.

d. While the 1992 plan contained fewer split counties than all of the plans generated by the contiguity algorithm and most of the plans generated by the compactness algorithm, the 1992 plan divided more counties than all 10,000 plans created by the county integrity and county integrity/compactness algorithms. On average, these 10,000 plans split only 10.2 counties; the 1992 plan divided 44 counties, or four times as many counties as the average plan generated by our algorithms giving weight to county lines. Indeed, under the 1992 plan, District 1 by itself split 19 counties, while District 12 divided 10. Our computer analysis suggests that the 1992 map gave very little weight to the preservation of county lines.

e. With regard to compactness, none of the 240,000 computer-generated districts was as non-compact as District 12 in the 1992 plan. In contrast, one-third of the computer-generated plans contained at least one district as non-compact as District 1, according to our circle measure of compactness.

(See the text of the paper for a discussion of the compactness measures used for our analysis.) These findings plainly suggest that compactness was subordinated to race in the creation of District 12.

f. While the 1992 plan did not pair any incumbents, less than 5 percent of the computer-generated plans did not do so -- indicating that incumbency protection was a criterion in the map drawing process. But it must be noted that none of the computer-generated plans without paired incumbents contained any majority black districts. Thus, while the 1992 plan might have weighted incumbency, race appears to have been a more important factor.

g. Our findings led us to conclude, for North Carolina, that "it is very difficult, if not impossible, to draw two African American majority districts and to adhere to traditional districting principles such as compactness and jurisdictional integrity. Beyond this point, moreover, it is highly unlikely that strict adherence to a race neutral redistricting process would yield even a single majority African American district, let alone two." (By way of contrast, our study concluded that "a race-neutral redistricting process could produce a black majority district" in Alabama and that there is "a fairly strong likelihood that race-neutral redistricting would lead to the creation of an African American majority district" in Mississippi.)

4. The findings in the 1997 APSA Paper have relevance for the evaluation of the 1998 North Carolina congressional plan.

a. Race is a driving force in the 1998 North Carolina congressional plan. As noted above, a race-neutral redistricting process is not likely to yield a congressional plan with a single majority black district or to lead to a plan with two 40-percent black districts. The 1998 plan contains both a 50.3 percent black district (the 1st) and a 46.7 percent black district (the 12th). These figures indicate that race was given substantial weight in the configuration of districts.

b. In our 1997 study, the algorithms taking county integrity into account split, on average, only 10 counties. (Though not reported in the paper, the two algorithms giving weight to county lines, at most, divided only 11 counties; some plans split as few as 6 counties.) The 1998 plan splits 22 counties. Moreover, 16 of the 22 divided counties are associated with District 1 (which splits 10 of its 20 counties) and District 12 (which divides up all 6 of its constituent counties). Thus, the 1998 plan divides counties unnecessarily and the excessive division is closely linked to the preservation of substantial black population percentages in Districts 1 and 12.

c. In 1992, there were only six states in which congressional district lines split as many as 10 counties. These

states were Florida (District 3), Georgia (2, 8), Louisiana (4, 5, 6), North Carolina (1, 3, 10, 12), South Carolina (6), and Virginia (3). (These data are reported in David C. Huckabee, *Congressional Districts: Objectively Evaluating Shapes* (Washington, DC: Congressional Research Service, Library of Congress, 1994), Appendix B.) Since 1992, courts have invalidated racially gerrymandering district lines in every one of these states, except South Carolina. Revised plans have substantially reduced instances of split counties; thus, the remedial order of the district court in Georgia, upheld in *Abrams*, reduced the number of divided counties in the Georgia congressional map to 6, as compared to 26 in the invalidated 1992 map. Similarly, revised district lines in Louisiana split only six parishes overall. In sharp contrast, the 1998 North Carolina plan divides 10 counties in District 1 alone and 22 counties overall, strongly suggesting that county integrity has been sacrificed to other considerations.

d. Among 1992 congressional districts, North Carolina's 12th District had a dispersion score of .045 (433 out of 435) and a perimeter score of .014 (431 out of 435). (Scores for all states appear in Huckabee, Appendix A. The dispersion measure is the ratio of the area of the district to the smallest circumscribing circle. The perimeter measure is the ratio of the area of the district to the area of a circle with the same perimeter as the district.) The 1998 version of District 12 has a dispersion score of .109 and a perimeter score of .041. If the 1992 rankings had remained unchanged, the new version of the

12th would still stand as the 430th least compact district on the dispersion measure and it would rank 423 on the perimeter measure. Plainly stated, the 12th District remains one of the very least compact congressional districts in the nation.

This the 23d day of March, 1998.

/s/ Thomas A. Darling

Sworn to and subscribed before me this
23d day of March, 1998.

/s/ [illegible]
Notary Public

My commission expires 07/01/2001

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AFFIDAVIT OF CARMEN CIRCINCIONE (WITHOUT ATTACHMENTS) (CD 59)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
Eastern Division
Civil Action No. 04-CV-104-H2

MARTIN CROMARTIE, *et al.*,	)
	)
v.	)
	)
JAMES B. HUNT, JR., in his official capacity as governor	)

AFFIDAVIT OF CARMEN CIRINCIONE

Carmen Cirincione, being first duly sworn deposes and says:

1. I hold a Ph.D. in Public Administration and Policy (1992) from the State University of New York at Albany. From 1994 to the present, I have been Assistant Professor of Political Science at the University of Connecticut (Storrs); from 1992 to 1994, I was Assistant Professor of Political Science at Clemson University. I am the co-author of a scholarly book and author or co-author of eight articles in professional journals. A current copy of my *curriculum vitae* is attached.

2. For the past two years, I have been working on a study of racial gerrymandering in the wake of *Shaw v. Reno*. My colleagues in this research are Dr. Thomas Darling. Assistant

Professor of Government and Public Administration at the University of Baltimore and Dr. Timothy G. O'Rourke, Teresa M. Fischer Professor of Citizenship Education at the University of Missouri-St. Louis. To date, we have written three conference papers on our research, have one article under submission to a professional journal, and are preparing a second article for submission. Points 3 through 4 describe portions of this research as it relates specifically to North Carolina and these points are jointly subscribed to by my research colleagues in separate affidavits.

3. Drawing on the Supreme Court's racial gerrymandering jurisprudence (as set out in *Shaw I* and *II*, *Miller*, *Bush*, and *Abrams*), my colleagues and I have sought to answer the following question: What is the likelihood that a challenged district, with a given racial configuration, would emerge from a redistricting process that selected plans on the basis of traditional, race-neutral criteria? In a paper presented at the 1997 Annual Meeting of the American Political Science Association, we offered a computer-intensive methodology to answer this question. We applied the methodology to the analysis of 1991-92 congressional redistricting in five states: Alabama, Georgia, Mississippi, North Carolina, and South Carolina. Attached to this affidavit is a true copy of this paper, entitled "Does the Supreme Court Have It Right? Toward a Quantitative Standard for Evaluating Congressional Redistricting Plans After *Shaw v. Hunt* and *Bush v. Vera*." Paragraphs a-g below summarize the findings of the paper as

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a. The methodology relies on computer programs, or algorithms, that are designed to create, at random, literally thousands of congressional districting plans for a given state. Our study uses four algorithms, each of which incorporates a different set of traditional districting criteria into the map drawing process. The *contiguity algorithm*, as the name suggests, creates contiguous districts of equal population -- building districts piece by piece, using census block groups as the basic unit of construction. (There are about 5,700 census block groups in North Carolina.) The *county integrity algorithm*, attempts to create districts that avoid dividing counties. The *compactness algorithm* ignores jurisdictional integrity and, instead, attempts to draw districts that are reasonably compact; for our purposes, that means districts that look like rectangles or boxes. The *county integrity and compactness* algorithm seeks to create compact districts comprised of whole counties (with county integrity given greater weight than compactness).

b. For each of the five states in our study, we generated 5,000 plans for each of the four algorithms. These 100,000 plans, with 820,000 districts, provide a baseline against which we can judge redistricting plans actually adopted. Because our algorithms do not take race into account, their results can be used to assess whether an "adopted plan" has, in

fact, subordinated traditional criteria to race. By comparing an adopted plan to randomly generated plans, we can estimate the likelihood that a plan with a specific number of black majority districts would emerge from a race-neutral redistricting process. If, for a particular state, the computer-generated plans do not contain as many black majority districts as the adopted plan, we can infer that the real mapmakers had to undertake a concerted effort to find such districts. Equally important, we can also assess whether an adopted plan elevates race over traditional criteria by comparing the characteristics of the adopted plan -- with respect, say, to county integrity and compactness -- to the characteristics of randomly generated plans. We assume that an adopted plan has been driven by racial considerations if it performs significantly worse on traditional criteria than the plans generated by our race-neutral algorithms.

c. For North Carolina, our study produced 5,000 plans for each of the four algorithms. Of the 240,000 districts in the 20,000 computer-generated districting plans, none is a majority African American majority district. In fact, the closest our algorithms came to producing a majority black district is a plan with a district containing a 47.1 percent black population (43.9 percent voting age population). Overall, 6,180 of the 20,000 the computer-generated plans contained a single African American influence district -- defined as one in which 40 percent or more of the population is African American. None of the computer-generated plans contained more than one influence district. It is clear that race was a factor in drawing

the congressional districting plan in North Carolina. It is very difficult to draw a plan containing one, let alone two majority African American districts without considering race.

d. While the 1992 plan contained fewer split counties than all of the plans generated by the contiguity algorithm and most of the plans generated by the compactness algorithm, the 1992 plan divided more counties than all 10,000 plans created by the county integrity and county integrity/compactness algorithms. On average, these 10,000 plans split only 10.2 counties; the 1992 plan divided 44 counties, or four times as many counties as the average plan generated by our algorithms giving weight to county lines. Indeed, under the 1992 plan, District 1 by itself split 19 counties, while District 12 divided 10. Our computer analysis suggests that the 1992 map gave very little weight to the preservation of county lines.

e. With regard to compactness, none of the 240,000 computer-generated districts was as non-compact as District 12 in the 1992 plan. In contrast, one-third of the computer-generated plans contained at least one district as non-compact as District 1, according to our circle measure of compactness. (See the text of the paper for a discussion of the compactness measures used for our analysis.) These findings plainly suggest that compactness was subordinated to race in the creation of District 12.

f. While the 1992 plan did not pair any incumbents, less than 5 percent of the computer-generated plans did not do so -- indicating that incumbency protection was a criterion in the map drawing process. But it must be noted that none of the computer-generated plans without paired incumbents contained any majority black districts. Thus, while the 1992 plan might have weighted incumbency, race appears to have been a more important factor.

g. Our findings led us to conclude, for North Carolina, that "it is very difficult, if not impossible, to draw two African American majority districts and to adhere to traditional districting principles such as compactness and jurisdictional integrity. Beyond this point, moreover, it is highly unlikely that strict adherence to a race neutral redistricting process would yield even a single majority African American district, let alone two." (By way of contrast, our study concluded that "a race-neutral redistricting process could produce a black majority district" in Alabama and that there is "a fairly strong likelihood that race-neutral redistricting would lead to the creation of an African American majority district" in Mississippi.)

4. The findings in the 1997 APSA Paper have relevance for the evaluation of the 1998 North Carolina congressional plan.

a. Race is a driving force in the 1998 North Carolina congressional plan. As noted above, a race-neutral redistricting process is not likely to yield a congressional plan with a single majority black district or to lead to a plan with two 40-percent black districts. The 1998 plan contains both a 50.3 percent black district (the 1st) and a 46.7 percent black district (the 12th). These figures indicate that race was given substantial weight in the configuration of districts.

b. In our 1997 study, the algorithms taking county integrity into account split, on average, only 10 counties. (Though not reported in the paper, the two algorithms giving weight to county lines, at most, divided only 11 counties; some plans split as few as 6 counties.) The 1998 plan splits 22 counties. Moreover, 16 of the 22 divided counties are associated with District 1 (which splits 10 of its 20 counties) and District 12 (which divides up all 6 of its constituent counties). Thus, the 1998 plan divides counties unnecessarily and the excessive division is closely linked to the preservation of substantial black population percentages in Districts 1 and 12.

c. In 1992, there were only six states in which congressional district lines split as many as 10 counties. These states were Florida (District 3), Georgia (2, 8), Louisiana (4, 5, 6), North Carolina (1, 3, 10, 12), South Carolina (6), and Virginia (3). (These data are reported in David C. Huckabee, *Congressional Districts: Objectively Evaluating Shapes*

(Washington, DC: Congressional Research Service, Library of Congress, 1994), Appendix B.) Since 1992, courts have invalidated racially gerrymandering district lines in every one of these states, except South Carolina. Revised plans have substantially reduced instances of split counties; thus, the remedial order of the district court in Georgia, upheld in *Abrams*, reduced the number of divided counties in the Georgia congressional map to 6, as compared to 26 in the invalidated 1992 map. Similarly, revised district lines in Louisiana split only six parishes overall. In sharp contrast, the 1998 North Carolina plan divides 10 counties in District 1 alone and 22 counties overall, strongly suggesting that county integrity has been sacrificed to other considerations.

d. Among 1992 congressional districts, North Carolina's 12th District had a dispersion score of .045 (433 out of 435) and a perimeter score of .014 (431 out of 435). (Scores for all states appear in Huckabee, Appendix A. The dispersion measure is the ratio of the area of the district to the smallest circumscribing circle. The perimeter measure is the ratio of the area of the district to the area of a circle with the same perimeter as the district.) The 1998 version of District 12 has a dispersion score of .109 and a perimeter score of .041. If the 1992 rankings had remained unchanged, the new version of the 12th would still stand as the 430th least compact district on the dispersion measure and it would rank 423 on the perimeter measure. Plainly stated, the 12th District remains one of the very least compact congressional districts in the nation.

This the 23rd day of March, 1998.

/s/ Carmen Cirincione

Sworn to and subscribed before me this
23rd day of March, 1998.

/s/ [illegible]
Notary Public

My commission expires 06-30-2002

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AFFIDAVIT OF TIMOTHY O'ROURKE (WITHOUT ATTACHMENTS) (CD 60)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
Eastern Division
Civil Action No. 04-CV-104-H2

MARTIN CROMARTIE, *et al.*,	)
	)
v.	)
	)
JAMES B. HUNT, JR., in his capacity as governor	)

AFFIDAVIT OF TIMOTHY G. O'ROURKE

Timothy G. O'Rourke, being first duly sworn, deposes and says:

1. I have a Ph.D. (1977) in political science from Duke University. I presently serve as the Teresa M. Fischer Professor of Citizenship Education at the University of Missouri-St. Louis: in that position, I hold a joint appointment as professor in the Department of Educational Leadership and Policy Studies and in the Department of Political Science. From 1992 to 1995, I was professor and chair of the Department of Political Science at Clemson University, and, before that, held academic appointments at the University of Virginia and Campbell College (now University) in North Carolina. For two decades, I have been studying and writing about representation and redistricting issues. My published

work includes *The Impact of Reapportionment* (1980), named by *CHOICE* as one of the Outstanding Academic Books of 1980; articles on the federal Voting Rights Act in the *Virginia Law Review*, the *University of Richmond Law Review*, and *Journal of Law and Politics*; and a chapter in Bernard Groffman and Chandler Davidson's *Controversies in Minority Voting: The Voting Rights Act in Perspective* (Brookings Institution, 1992). I have written specifically about North Carolina's now invalidated 1992 congressional redistricting plan in "*Shaw v. Reno*: The Shape of Things to Come," *26 Rutgers Law Journal·723-73* (1995); and "*Shaw v. Reno* and the *Hunt* for Double Cross-Overs," *28 PS: Political Science and Politics 36-41* (1995). I have testified before both U.S. House and Senate committees on various representational questions and have served as an expert witness in voting rights litigation, including the 1994 trial of *Shaw v. Hunt*. My testimony in the Georgia racial gerrymandering case was credited by the U.S. Supreme Court in its 1995 decision in *Miller v. Johnson*. Since the early 1980s, I have regularly taught a graduate/undergraduate political science course entitled "Voting Rights and Representation." A current copy of my *curriculum vitae* is attached.

2. For the past two years, I have been working on a study of racial gerrymandering in the wake of *Shaw v. Reno*. My colleagues in this research are Dr. Carmen Cirincione, Assistant Professor of Political Science at the University of Connecticut and Dr. Thomas Darling, Assistant Professor of Government

and Public Administration at the University of Baltimore. To date, we have written three conference papers on our research, have one article under submission to a professional journal, and are preparing a second article for submission. Points 3 through 4 describe portions of this research as it relates specifically to North Carolina and these points are jointly subscribed to by my research colleagues in separate affidavits.

3. Drawing on the Supreme Court's racial gerrymandering jurisprudence (as set out in *Shaw I* and *II*, *Miller*, *Bush*, and *Abrams*), my colleagues and I have sought to answer the following question: What is the likelihood that a challenged district, with a given racial configuration, would emerge from a redistricting process that selected plans on the basis of traditional, race-neutral criteria? In a paper presented at the 1997 Annual Meeting of the American Political Science Association, we offered a computer-intensive methodology to answer this question. We applied the methodology to the analysis of 1991-92 congressional redistricting in five states: Alabama, Georgia, Mississippi, North Carolina, and South Carolina. Attached to this affidavit is a true copy of this paper, entitled "Does the Supreme Court Have It Right? Toward a Quantitative Standard for Evaluating Congressional Redistricting Plans After *Shaw v. Hunt* and *Bush v. Vera*." Paragraphs a-g below summarize the findings of the paper as they relate to the unconstitutional 1992 North Carolina congressional redistricting plan.

a. The methodology relies on computer programs, or algorithms, that are designed to create, at random, literally thousands of congressional districting plans for a given state. Our study uses four algorithms, each of which incorporates a different set of traditional districting criteria into the map drawing process. The *contiguity algorithm*, as the name suggests, creates contiguous districts of equal population -- building districts piece by piece, using census block groups as the basic unit of construction. (There are about 5,700 census block groups in North Carolina.) The *county integrity algorithm*, attempts to create districts that avoid dividing counties. The *compactness algorithm* ignores jurisdictional integrity and, instead, attempts to draw districts that are reasonably compact; for our purposes, that means districts that look like rectangles or boxes. The *county integrity and compactness* algorithm seeks to create compact districts comprised of whole counties (with county integrity given greater weight than compactness).

b. For each of the five states in our study, we generated 5,000 plans for each of the four algorithms. These 100,000 plans, with 820,000 districts, provide a baseline against which we can judge redistricting plans actually adopted. Because our algorithms do not take race into account, their results can be used to assess whether an "adopted plan" has, in fact, subordinated traditional criteria to race. By comparing an adopted plan to randomly generated plans, we can estimate the likelihood that a plan with a specific number of black majority

districts would emerge from a race-neutral redistricting process. If, for a particular state, the computer-generated plans do not contain as many black majority districts as the adopted plan, we can infer that the real mapmakers had to undertake a concerted effort to find such districts. Equally important, we can also assess whether an adopted plan elevates race over traditional criteria by comparing the characteristics of the adopted plan -- with respect, say, to county integrity and compactness -- to the characteristics of randomly generated plans. We assume that an adopted plan has been driven by racial considerations if it performs significantly worse on traditional criteria than the plans generated by our race-neutral algorithms.

c. For North Carolina, our study produced 5,000 plans for each of the four algorithms. Of the 240,000 districts in the 20,000 computer-generated districting plans, none is a majority African American majority district. In fact, the closest our algorithms came to producing a majority black district is a plan with a district containing a 47.1 percent black population (43.9 percent voting age population). Overall, 6,180 of the 20,000 the computer-generated plans contained a single African American influence district -- defined as one in which 40 percent or more of the population is African American. None of the computer-generated plans contained more than one influence district. It is clear that race was a factor in drawing the congressional districting plan in North Carolina. It is very difficult to draw a plan containing one, let alone two majority African American districts without considering race.

d. While the 1992 plan contained fewer split counties than all of the plans generated by the contiguity algorithm and most of the plans generated by the compactness algorithm, the 1992 plan divided more counties than all 10,000 plans created by the county integrity and county integrity/compactness algorithms. On average, these 10,000 plans split only 10.2 counties; the 1992 plan divided 44 counties, or four times as many counties as the average plan generated by our algorithms giving weight to county lines. Indeed, under the 1992 plan, District 1 by itself split 19 counties, while District 12 divided 10. Our computer analysis suggests that the 1992 map gave very little weight to the preservation of county lines.

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4. The findings in the 1997 APSA Paper have relevance for the evaluation of the 1998 North Carolina congressional plan.

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Abrams, reduced the number of divided counties in the Georgia congressional map to 6, as compared to 26 in the invalidated 1992 map. Similarly, revised district lines in Louisiana split only six parishes overall. In sharp contrast, the 1998 North Carolina plan divides 10 counties in District 1 alone and 22 counties overall, strongly suggesting that county integrity has been sacrificed to other considerations.

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5. Readily observable characteristics of Districts 1 and 12 reveal that traditional redistricting principles were subordinated to race in the configuration of those districts.

a. Apart from being oddly shaped, District 12 is the only district, among 12, that contains no "whole" counties. District 12 not only divides six counties, it also splits the populations of eight cities (Charlotte, Greensboro, High Point, Lexington, Salisbury, Statesville, Thomasville, and Winston-Salem) and several towns.

b. In the counties District 12 traverses, it takes in nearly every precinct with a black population in excess of 40 percent (according to a map prepared by plaintiffs' counsel on the General Assembly's public access terminal).

c. District 12 bisects Mecklenburg County, whose population (511,433) makes it nearly large enough to be a district by itself. As a consequence of the configuration of District 12, the District 9 portion of Mecklenburg County is divided between western and eastern wings, tied together by a strip of land less than two miles wide (District 9 stretches over 1171 square miles). This band is the result of splitting Charlotte Precinct 77 -- one of only two precincts split by the redistricting plan. Precinct 77 contains 3,461 persons, 86 percent of whom are black. The 1998 redistricting plan attaches the northern half of Precinct 77 and all but one of its 3,461 persons to District 12 and leaves the southern half of the precinct -- and but a single person -- to provide the essential connecting link between the two wings of District 9. The splitting of Precinct 77 closely resembles what the Supreme Court condemned in *Miller v. Johnson*, 63 U.S.L.W. 4726, at

4728, 4730-31 (1995), that is, the use of "land bridges" and split precincts in order to effect a sorting out of persons along racial lines.

d. Districts 1 and 3 are "interwoven," with District 1 sending two long tentacles into the southern section of District 3. District 1, aside from splitting 10 of its 20 counties, divides the populations of six cities (Goldsboro, Greenville, Kinston, New Bern, Washington, and Wilson) and several towns.

This the 23d day of March, 1998.

/s/ Timothy G. O'Rourke

Sworn to and subscribed before me this
23d day of March, 1998.

/s/ Lois Raley
Notary Public

My commission expires: 11-19-01

LOIS RALEY
Notary Public - State of Missouri
City of St. Louis
My Commission Expires Nov. 19, 2001

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AFFIDAVIT OF MARTIN B. MCGEE (WITH ALL ATTACHMENTS EXCEPT MAPS (EXHIBITS M, N, O & P WHICH WERE LODGED WITH THE COURT ON AUGUST 27, 1998 AS MAPS 1, 2, 3 & 4)) (CD 61)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 4.96-CV-104-BO(3)

MARTIN CROMARTIE, *et al.*, Plaintiffs,	)
vs.	)
JAMES B. HUNT, JR., in his official capacity as Governor of the State North Carolina, *et al.*, Defendants.	)

AFFIDAVIT OF MARTIN B. McGEE

Martin B. McGee, being duly sworn, deposes and declares:

I am a resident of Cabarrus County, where I practice law in Concord, NC with the firm of Williams, Boger, Grady, Davis and Tittle, P.A. I am also one of the attorneys for the plaintiffs in this action and in the recent past have had primary responsibility for plaintiffs' representation due to the surgery and convalescence of my co-counsel, Robinson O. Everett.

In the course of my preparation for submission of a reply to the Defendants' motion for summary judgment, I had occasion to obtain from the public access office of the General Assembly maps and various supporting data relating to the 1997 congressional redistricting plan. I am attaching herewith various Exhibits which I have obtained from Dan Frey, GIS Analyst, with the North Carolina Assembly.

1. Exhibit A- Demographic information related to Precinct 11 in Guilford County.

2. Exhibit B- Demographic information related to Precinct 14 in Guilford County.

3. Exhibit C- Demographic information related to Precinct 17 in Guilford County.

4. Exhibit D- Demographic information related to the Brunson Elementary School Precinct (1408) in Forsyth County.

5. Exhibit E- Demographic information related to the Hanes Community Center Precinct (1422) in Forsyth County.

6. Exhibit F- Demographic information related to the Latham Elementary School Precinct (1427) in Forsyth County.

7. Exhibit G- Demographic information related to Charlotte Precinct 10 in Mecklenburg County.

8. Exhibit H- Demographic information related to Charlotte Precinct 21 in Mecklenburg County.

9. Exhibit I- Demographic information related to Charlotte Precinct 38 in Mecklenburg County.

10. Exhibit J- Demographic information related to Charlotte Precinct 77 in Mecklenburg County.

11. Exhibit K- A list of precincts split by 1997 congressional districts.

12. Exhibit L- A list of towns and cities split by 1997 congressional districts.

13. Exhibit M- Map of Twelfth District shaded by minority concentrations.

14. Exhibit N- Map of Guilford County shaded by minority concentrations and marked by Democratic registration.

15. Exhibit O- Map of Forsyth County shaded by minority concentrations and marked by Democratic registration.

16. Exhibit P- Map of Mecklenburg County shaded by minority concentrations and marked by Democratic registration.

Further affiant sayeth not.

/s/ Martin B. McGee

Subscribed and sworn to before me
this 23rd day of March, 1998.

/s/ Anita Robinson
Notary Public Expires 10-28-2002

Population of GB-11*(0111) **McGee Ex A**

Guilford County (81)
GB-11 * (0111)

Area:	0.8215 sq.mi.
Perimeter:	4.2708 mi.
Assigned to:	6
Units number:	205714
Total Pop.:	2,015 (100%)
White Pop.:	1,625 (80.65%)
Black Pop.:	354 (17.57%)
Am. Indian Pop.:	12 (0.60%)
Asian Pop.:	17 (0.84%)
Other Population:	7 (0.35%)
Hispanic Pop.:	25 (1.24%)
Total Voting Age Pop.:	1,828 (90.72%)
White Voting Age Pop.:	1,466 (80.20%)
Black Voting Age Pop:	327 (17.89%)
Am. Indian Voting Age	Pop.: 11 (0.60%)
Asian Voting Age Pop.:	17 (0.93%)
Other Voting Age Pop.:	7 (0.38%)
Hispanic Voting Age Pop.:	25 (1.37%)
Total Registered Voters:	1,420 (70.47%)
Registered Whites:	1,262 (88.87%)
Registered Blacks:	154 (10.85%)
Registered Others:	4 (0.28%)
Democrats:	885 (62.32%)
Republican:	400 (28.17%)

Unaffiliated:	135 (9.51%)
Senatorial Race, Dem. 1990:	505 (67.51%)
Senatorial Race, Rep. 1990:	243 (32.49%)
Lt. Gov., Dem. 1988:	449 (61.68%)
Lt. Gov., Rep. 1988:	279 (38.32%)
Ct. of Appeals, Dem. 1988:	347 (52.98%)
Ct. of Appeals, Rep.1988:	308 (47.02%)

Population of GB-14*(0114) **McGee Ex B**

Guilford County (81)
GB-14 *(0114)

Area:	0.6573 sq.mi.
Perimeter:	3.4115 mi.
Assigned to:	6
Units number:	203595
Total Pop.:	5,417 (100%)
White Pop.,.	4,478 (82.67%)
Black Pop.:	823 (15.19%)
Am. Indian Pop.:	25 (0.46%)
Asian Pop.:	69 (1.27%)
Other Population:	22 (0.41%)
Hispanic Pop.:	67 (1.24%)
Total Voting Age Pop.:	5,307 (97.97%)
White Voting Age Pop.:	4,385 (82.63%)
Black Voting Age Pop:	809 (15.24%)
Am. Indian Voting Age Pop.:	25 (0.47%)
Asian Voting Age Pop.:	67 (1.26%)
Other Voting Age Pop.:	21 (0.40%)
Hispanic Voting Age Pop.:	66 (1.24%)
Total Registered Voters:	3,536 (65.28%)
Registered Whites:	2,737 (77.40%)
Registered Blacks:	776 (21.95%)
Registered Others:	23 (0.65%)
Democrats:	2,056 (58.14%)
Republican:	930 (26.30%)

Unaffiliated:	550 (15.55%)
Senatorial Race, Dem. 1990:	1,434 (86.91%)
Senatorial Race, Rep. 1990:	216 (13.09%)
Lt. Gov., Dem. 1988:	870 (65.66%)
Lt. Gov., Rep. 1988:	455 (34.34%)
Ct. of Appeals, Dem. 1988:	776 (63.92%)
Ct. of Appeals, Rep.1988:	438 (36.08%)

Population of GB-17*(0117) **McGee Ex C**

Guilford County (81)
GB-17 * (0117)

Area:	1.0335 sq.mi.
Perimeter:	5.3999 mi.
Assigned to:	6
Units number:	203308
Total Pop.:	3,552 (100%)
White Pop.:	3,021 (85.05%)
Black Pop.:	323 (9.09%)
Am. Indian Pop.:	19 (0.53%)
Asian Pop.:	184 (5.18%)
Other Population:	5 (0.14%)
Hispanic Pop.:	44 (1.24%)
Total Voting Age Pop.:	3,077 (86.63%)
White Voting Age Pop.:	2,673 (86.87%)
Black Voting Age Pop:	266 (8.64%)
Am. Indian Voting Age Pop.:	13 (0.42%)
Asian Voting Age Pop.:	123 (4.00%)
Other Voting Age Pop.:	2 (0.06%)
Hispanic Voting Age Pop.:	36 (1.17%)
Total Registered Voters:	2,365 (66.58%)
Registered Whites:	2,174 (91.92%)
Registered Blacks:	180 (7.61%)
Registered Others:	11 (0.47%)
Democrats:	1,463 (61.86%)
Republican:	677 (28.63%)

Unaffiliated:	225 (9.51%)
Senatorial Race, Dem. 1990:	777 (65.08%)
Senatorial Race, Rep. 1990:	417 (34.92%)
Lt. Gov., Dem. 1988:	713 (61.68%)
Lt. Gov., Rep. 1988:	443 (38.32%)
Ct. of Appeals, Dem. 1988:	604 (58.19%)
Ct. of Appeals, Rep. 1988:	434 (41.81%)

Population of Brunson Elementary School*(1408)

McGee Ex D

Forsyth County (67)	
Brunson Elementary School * (1408)	
Area:	0.5383 sq.mi.
Perimeter:	4.4986 mi.
Assigned to:	5
Units number:	19491
Total Pop.:	2,303 (100%)
White Pop.:	1,630 (70.78%)
Black Pop.:	641 (27.83%)
Am. Indian Pop.:	4 (0.17%)
Asian Pop.:	25 (1.09%)
Other Population:	3 (0.13%)
Hispanic Pop.:	30 (1.30%)
Total Voting Age Pop.:	1,986 (86.24%)
White Voting Age Pop.:	1,448 (72.91%)
Black Voting Age Pop:	514 (25.88%)
Am. Indian Voting Age Pop.:	4 (0.20%)
Asian Voting Age Pop.:	17 (0.86%)
Other Voting Age Pop.:	3 (0.15%)
Hispanic Voting Age Pop.:	23 (1.16%)
Total Registered Voters:	1,413 (61.35%)
Registered Whites:	1,147 (81.17%)
Registered Blacks:	260 (18.40%)
Registered others:	6 (0.42%)
Democrats:	929 (65.75%)

Republican:	316 (22.36%)
Unaffiliated:	168 (11.89%)
Senatorial Race, Dem. 1990:	572 (75.46%)
Senatorial Race, Rep. 1990:	186 (24.54%)
Lt. Gov., Dem. 1988:	537 (66.30%)
Lt. Gov., Rep. 1988:	273 (33.70%)
Ct. of Appeals, Dem.1988:	478 (65.84%)
Ct. of Appeals, Rep. 1988:	248 (34.16%)

Population of Hanes Community Center*(1422)

McGee Ex E

Forsyth County (67)	
Hanes Community Center * (1422)	
Area:	2.3607 sq.mi.
Perimeter:	6.6935 mi.
Assigned to:	5
Units number:	18116
Total Pop.:	6,044 (100%)
White Pop.:	4,029 (66.66%)
Black Pop.:	1,938 (32.06%)
Am. Indian Pop.:	8 (0.13%)
Asian Pop.:	56 (0.93%)
Other Population:	13 (0.22%)
Hispanic Pop.:	46 (0.76%)
Total Voting Age Pop.:	5,473 (90.55%)
White Voting Age Pop.:	3,825 (69.89%)
Black Voting Age Pop:	1,576 (28.80%)
Am. Indian Voting Age Pop.:	7 (0.13%)
Asian Voting Age Pop.:	54 (0.99%)
Other Voting Age Pop.:	11 (0.20%)
Hispanic Voting Age Pop.:	38 (0.69%)
Total Registered Voters:	2,375 (39.30%)
Registered Whites:	1,369 (57.64%)
Registered Blacks:	1,004 (42.27%)
Registered Others:	2 (0.08%)
Democrats:	1,805 (76%)

Republican:	461 (19.41%)
Unaffiliated:	109 (4.59%)
Senatorial Race, Dem. 1990:	1,182 (75.77%)
Senatorial Race, Rep. 1990:	378 (24.23%)
Lt. Gov., Dem. 1988:	1,101 (71.68%)
Lt. Gov., Rep. 1988:	435 (28.32%)
Ct. of Appeals, Dem. 1988:	909 (69.18%)
Ct. of Appeals, Rep. 1988:	405 (30.82%)

Population of Latham Elementary School*(1427)

McGee Ex F

Forsyth County (67)	
Latham Elementary School * (1427)	
Area:	1.2612 sq. mi.
Perimeter:	4.7609 mi.
Assigned to:	5
Units number:	16612
Total Pop.:	2,955 (100%)
White Pop.:	2,249 (78.77%)
Black Pop.:	566 (19.82%)
Am. Indian Pop.:	20 (0.70%)
Asian Pop.:	18 (0.63%)
Other Population:	2 (0.07%)
Hispanic Pop.:	10 (0.35%)
Total Voting Age Pop.:	2,332 (81.68%)
White Voting Age Pop.:	1,895 (81.26%)
Black Voting Age Pop:	406 (17.41%)
Am. Indian Voting Age Pop.:	13 (0.56%)
Asian Voting Age Pop.:	16 (0.69%)
Other Voting Age Pop.:	2 (0.09%)
Hispanic Voting Age Pop.:	7 (0.30%)
Total Registered Voters:	1,603 (56.15%)
Registered Whites:	1,387 (86.53%)
Registered Blacks:	212 (13.23%)
Registered Others:	4 (0.25%)
Democrats:	1,046 (65.25%)

Republican:	416 (25.95%)
Unaffiliated:	141 (8.80%)
Senatorial Race, Dem. 1990:	509 (54.85%)
Senatorial Race, Rep. 1990:	419 (45.15%)
Lt. Gov., Dem. 1988:	572 (53.86%)
Lt. Gov., Rep. 1988:	490 (46.14%)
Ct. of Appeals, Dem. 1988:	547 (55.87%)
Ct. of Appeals, Rep. 1988:	432 (44.13%)

Population of Charlotte Pct. 10*(0110)

McGee Ex G

Mecklenburg County (119)
Charlotte Pct. 10*(0110)

Area:	0.5663 sq.mi.
Perimeter:	3.5300 mi.
Assigned to:	9
Units number:	69737
Total Pop.:	2,248 (100%)
White Pop.:	2,006 (89.23%)
Black Pop.:	155 (6.90%)
Am. Indian Pop.:	48 (2.14%)
Asian Pop.:	17 (0.76%)
Other Population:	22 (0.98%)
Hispanic Pop.:	33 (1.41%)
Total Voting Age Pop.:	1,808 (80.43%)
White Voting Age Pop.	1,647 (91.10%)
Black Voting Age Pop:	98 (5.42%)
Am. Indian Voting Age Pop.:	34 (1.88%)
Asian Voting Age Pop.:	11 (0.61%)
Other Voting Age Pop.:	18 (1.00%)
Hispanic Voting Age Pop.:	29 (1.60%)
Total Registered Voters:	1,483 (65.97%)
Registered Whites:	1,409 (95.01%)
Registered Blacks:	64 (4.32%)
Registered Others:	10 (0.67%)
Democrats:	941 (63.45%)

Republican:	407 (27.44%)
Unaffiliated:	135 (9.10%)
Senatorial Race, Dem. 1990:	714 (73.01%)
Senatorial Race, Rep. 1990:	264 (26.99%)
Lt. Gov., Dem. 1988:	574 (62.66%)
Lt. Gov., Rep. 1988:	342 (37.34%)
Ct. of Appeals, Dem. 1988:	410 (55.78%)
Ct. of Appeals, Rep.1988:	325 (44.22%)

Population of Charlotte Pct. 21*(0121)

McGee Ex H

Mecklenburg County (119)
Charlotte Pct. 21 * (0121)

Area:	0.7523 sq.mi.
Perimeter:	3.9950 mi.
Assigned to:	9
Units number:	69591
Total Pop.:	3,139 (100%)
White Pop.:	2,683 (85.47%)
Black Pop.:	330 (10.51%)
Am. Indian Pop.:	25 (0.80%)
Asian Pop.:	68 (2.17%)
Other Population:	33 (1.05%)
Hispanic Pop.:	83 (2.64%)
Total Voting Age Pop.:	2,577 (82.10%)
White Voting Age Pop.:	2,282 (88.55%)
Black Voting Age Pop:	202 (7.84%)
Am. Indian Voting Age Pop.:	18 (0.70%)
Asian Voting Age Pop.:	51 (1.98%)
Other Voting Age Pop.:	24 (0.93%)
Hispanic Voting Age Pop.:	54 (2.10%)
Total Registered Voters:	1,793 (57.12%)
Registered Whites:	1,667 (92.97%)
Registered Blacks:	118 (6.58%)
Registered others:	8 (0.45%)
Democrats:	1,066 (59.45%)

Republican:	612 (34.13%)
Unaffiliated:	115 (6.41%)
Senatorial Race, Dem. 1990:	663 (60.11%)
Senatorial Race, Rep. 1990:	440 (39.89%)
Lt. Gov., Dem. 1988:	553 (52.32%)
Lt. Gov., Rep. 1988:	504 (47.68%)
Ct. of Appeals, Dem.1988:	425 (48.30%)
Ct. of Appeals, Rep.1988:	455 (51.70%)

Population of Charlotte Pct. 38*(0138)

McGee Ex I

Mecklenburg County (119)	
Charlotte Pct. 38 * (0138)	
Area:	0.7095 sq.mi.
Perimeter:	3.8506 mi.
Assigned to:	9
Units number:	69605
Total Pop.:	3,457 (100%)
White Pop.:	2,936 (84.93%)
Black Pop.:	397 (11.48%)
Am. Indian Pop.:	18 (0. 52%)
Asian Pop.:	71 (2.05%)
Other Population:	35 (1.01%)
Hispanic Pop.:	90 (2.60%)
Total Voting Age Pop.:	2,974 (86.03%)
White Voting Age Pop.:	2,576 (86.62%)
Black Voting Age Pop:	299 (10.05%)
Am. Indian Voting Age Pop.:	14 (0.47%)
Asian Voting Age Pop.:	57 (1.92%)
Other Voting Age Pop.:	28 (0.94%)
Hispanic Voting Age Pop.:	75 (2.52%)
Total Registered Voters:	2,086 (60.34%)
Registered Whites:	1,895 (90.84%)
Registered Blacks:	176 (8.44%)
Registered Others:	15 (0.72%)
Democrats:	1,081 (51.82%)

Republican:	822 (39.41%)
Unaffiliated:	183 (8.77%)
Senatorial Race, Dem. 1990:	634 (54.33%)
Senatorial Race, Rep. 1990:	533 (45.67%)
Lt. Gov., Dem. 1988:	534 (44.95%)
Lt. Gov., Rep. 1988:	654 (55.05%)
Ct. of Appeals, Dem. 1988:	410 (40.67%)
Ct. of Appeals, Rep.1988:	598 (59.33%)

Population of Charlotte Pct. 77 * (0177)

McGee Ex J

Mecklenburg County (119)
Charlotte Pct. 77 * (0177)

Area:	4.4853 sq.mi.
Perimeter:	15.6393 mi.
Assigned to:	Split
Units number:	69375
Total Pop.:	3,461 (100%)
White Pop.:	440 (12.71%)
Black Pop.:	2,987 (86.30%)
Am. Indian Pop.:	6 (0.17%)
Asian Pop.:	21 (0.61%)
Other Population:	7 (0.20%)
Hispanic Pop.:	17 (0.49%)
Total Voting Age Pop.:	2,309 (66.71%)
White Voting Age Pop.:	351 (15.20%)
Black Voting Age Pop:	1,928 (83.50%)
Am. Indian Voting Age Pop.:	5 (0.22%)
Asian Voting Age Pop.:	19 (0.82%)
Other Voting Age Pop.:	6 (0.26%)
Hispanic Voting Age Pop.:	13 (0.56%)
Total Registered Voters:	1,586 (45.82%)
Registered Whites:	227 (14.31%)
Registered Blacks:	1,355 (85.44%)
Registered Others:	4 (0.25%)
Democrats:	1,370 (86.38%)

Republican:	157 (9.90%)
Unaffiliated:	59 (3.72%)
Senatorial Race, Dem. 1990:	997 (94.06%)
Senatorial Race, Rep. 1990:	63 (5.94%)
Lt. Gov., Dem. 1988:	515 (70.36%)
Lt. Gov., Rep. 1988:	217 (29.64%)
Ct. of Appeals, Dem. 1988:	446 (69.36%)
Ct. of Appeals, Rep.1988:	197 (30.64%)

North Carolina Voter Precincts Split by 97 Congressional Districts

McGee Ex K

VTE Key	County	Precinct	District	Total Pop	Black Pop	Percent Black
37.049.0809	Craven	Rhems*	3	23	23	100.0%
37.049.0809	Craven	Rhems*	1	571	308	53.9%
37.119.0177	Mecklenburg	Charlotte Pct. 77*	12	3,460	2,987	86.3%
37.119.0177	Mecklenburg	Charlotte Pct. 77*	9	1	0	0.0%

*Generated by the North Carolina General Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

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Places Split by 97 NC Congressional Districts*

McGee Ex L

Place CE	Name	District	Total Pop	Black Pop	Percent Black
0140	Ayden town	3	150	0	0.0%
0140	Ayden town	1	4,590	2,404	52.4%
0195	Battleboro town	1	280	181	64.6%
0195	Battleboro town	2	167	11	6.6%
0390	Burlington city	5	36,339	8,759	24.1%
0390	Burlington city	6	3,159	150	4.7%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
0480	Charlotte city	9	213,515	17,343	8.1%
0480	Charlotte city	12	182,419	108,484	59.5%
0535	Clinton city	7	891	171	19.2%
0535	Clinton city	2	7,313	3,289	45.0%
0600	Cornelius town	9	308	4	1.3%
0600	Cornelius town	12	2,273	521	22.9%
0660	Davidson town	10	0	0	
0660	Davidson town	12	4,046	639	15.8%
0815	Elkin town	5	3,720	347	9.3%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
0815	Elkin town	10	70	8	11.4%
0910	Fayetteville city	7	44,988	10,709	23.8%
0910	Fayetteville city	8	30,707	18,270	59.5%
0960	Fremont town	3	72	62	86.1%
0960	Fremont town	1	1,638	854	52.1%
0975	Garner town	4	11,959	1,857	15.5%
0975	Garner town	2	3,008	776	25.8%
1010	Gibsonville town	5	1,480	148	10.0%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
1010	Gibsonville town	6	1,961	478	24.4%
1035	Goldsboro city	1	25,734	15,901	61.8%
1035	Goldsboro city	3	14,975	3,413	22.8%
1045	Graham city	5	7,234	1,377	19.0%
1045	Graham city	6	3,192	296	9.3%
1065	Greensboro city	12	95,080	52,844	55.6%
1065	Greensboro city	6	88,441	9,460	10.7%
1070	Greenville city	1	19,249	13,197	68.6%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
1070	Greenville city	3	25,723	2,140	8.3%
1195	High Point city	5	6	0	0.0%
1195	High Point city	6	37,200	4,367	11.7%
1195	High Point city	12	32,290	16,613	51.4%
1320	Kannapolis city	6	8,476	1,327	15.7%
1320	Kannapolis city	8	21,220	4,015	18.9%
1340	Kernersville town	5	10,836	606	5.6%
1340	Kernersville town	6	0	0	

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Place CE	Name	District	Total Pop	Black Pop	Percent Black
1355	Kinston city	3	8,967	1,255	14.0%
1355	Kinston city	1	16,328	13,360	81.8%
1450	Lexington city	6	2,885	363	12.6%
1450	Lexington city	12	13,696	4,553	33.2%
1640	Mebane city	4	485	65	13.4%
1640	Mebane city	5	4,269	887	20.8%
1700	Mooresville town	10	0	0	
1700	Mooresville town	12	8,818	2,131	24.2%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
1745	Mount Olive town	3	4,581	2,404	52.5%
1745	Mount Olive town	7	1	1	100.0%
1770	New Bern city	3	3,442	843	24.5%
1770	New Bern city	1	13,921	6,720	48.3%
2020	Raleigh city	2	107,979	47,131	43.6%
2020	Raleigh city	4	99,973	10,229	10.2%
2040	Red Springs town	7	58	0	0.0%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
2040	Red Springs town	8	3,736	1,965	52.6%
2115	Rocky Mount city	1	17,057	14,473	84.9%
2115	Rocy Mount city	2	31,940	9,824	30.8%
2195	Salisbury city	6	5,250	808	15.4%
2195	Salisbury city	12	17,837	7,316	41.0%
2260	Sharpsburg town	1	482	391	81.1%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
2260	Sharpsburg town	2	1,054	193	18.3%
2370	Spencer town	6	8	2	25.0%
2370	Spencer town	12	3,211	723	22.5%
2430	Statesville city	10	12,324	2,327	18.9%
2430	Statesville city	12	5,243	3,953	75.4%
2467	Surf City town	3	317	3	0.9%
2467	Surf City town	7	653	1	0.2%
2510	Thomasville city	6	6,909	660	9.6%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
2510	Thomasville city	12	9,006	3,760	41.7%
2535	Trent Woods town	1	299	0	0.0%
2535	Trent Woods town	3	2,067	0	0.0%
2545	Troutman town	10	1,419	395	27.8%
2545	Troutman town	12	74	0	0.0%
2655	Washington city	3	2	0	0.0%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
2655	Washington city	1	9,073	4,158	45.8%
2687	Weddington town	8	3,803	108	2.8%
2687	Weddington town	9	0	0	
2725	Whitakers town	1	464	281	60.6%
2725	Whitakers town	2	396	163	41.2%
2760	Wilson city	1	26,127	16,772	64.2%
2760	Wilson city	2	10,803	554	5.1%

*Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

Place CE	Name	District	Total Pop	Black Pop	Percent Black
2785	Winston-Salem city	12	54,270	41,998	77.4%
2785	Winston-Salem city	5	89,215	14,330	16.1%

•Generated by the North Carolina Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
Raleigh Division
Civil Action No. 4:96-CV-104-BO(3)

MARTIN CROMARTIE, *et al.*, Plaintiffs,

vs.

JAMES B. HUNT, JR., in his official capacity as Governor of the State of North Carolina, *et al.*, Defendants.

CONDITIONAL MOTION TO STRIKE THE AFFIDAVITS OF ROY COOPER, III AND EDWIN McMAHAN

Plaintiffs respectfully show that Defendants have moved to strike the affidavit of John Weatherly submitted by Plaintiffs. In support thereof, Defendants have contended that his statements as a legislator, with respect to the intent of a statute, are inadmissible under North Carolina law. In support of that contention they have cited several precedents. Plaintiffs submit that, if accepted, the same argument would render inadmissible the affidavits offered by Senator Cooper and Representative McMahan;

CONDITIONAL MOTION TO STRIKE, CONTINUED . . .

WHEREFORE, Plaintiffs move that, in the event that the Court decides to grant Defendants' motion to strike Weatherly's affidavit, the Court also strike the affidavits of Cooper and McMahan.

Respectfully submitted, this the 23rd day of March, 1998.

/s/ Robinson O. Everett
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Williams, Boger, Grady, Davis
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/s/ by: Martin B. McGee
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ANSWER OF DEFENDANT-INTERVENOR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
Civil Action No. 4:96-CV-104

MARTIN CROMARTIE, *et al.*)
Plaintiffs,)
)
v.)
)
JAMES B. HUNT, JR., *et al.*,)
Defendants,)
)
and)
)
ALFRED SMALLWOOD, *et al.*,)
Applicant Defendant-Intervenors.)

AMENDED ANSWER OF DEFENDANT INTERVENORS

Defendant intervenors Alfred Smallwood, David Moore, William M. Hodges, Robert L. Davis, Jr., Jan Valder, Barney Offerman, Virginia Newell, Charles Lambeth and George Simkins answer the titled and numbered allegations of the Complaint as follows:

Preliminary Statement

Plaintiffs' preliminary statement is a summary description of the nature of their claims and need not be admitted or denied. To the extent an answer is required, the allegations are denied.

The Parties

1. Defendant intervenors do not have sufficient information upon which to form belief about the accuracy of the allegations of Paragraph 1. Those allegations are therefore denied.

2. It is admitted that James B. Hunt, Jr. is the Go rnor of the State of North Carolina, sued in his official capacity, and that pursuant to Article III of the constitution of North Carolina the executive power of the State is vested in the Governor and it is his duty to take care that the laws are faithfully executed. It is further admitted that pursuant to N.C. Gen. Stat. § 163-194, the Governor shall issue a commission attesting to person's election as a member of the United States House of Representatives upon the person's production of a certificate of his or her election from the Secretary of State. Any remaining allegations in Paragraph 2 are denied.

3. It is admitted that Dennis Wicker is the Lieutenant Governor of the State of North Carolina, sued in his

official capacity, and that pursuant to Articles II and III of the Constitution of North Carolina, he is President of the Senate and performs such additional duties, including signing enacted legislation, as the General Assembly or the Governor may assign to him. Any remaining allegations in Paragraph 3 are denied.

4. It is admitted that Harold Brubaker is the Speaker of the North Carolina House of Representatives, sued in his official capacity, and performs duties, including signing enacted legislation, assigned to him by the House of Representatives. Any remaining allegations of Paragraph 4 are denied.

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

Jurisdiction and Venue

7. It is admitted that plaintiffs rely upon the constitutional and statutory provisions cited in Paragraph 7. Any remaining allegations are denied.

8. The allegations of Paragraph 8 are admitted.

9. It is admitted that venue exists in the Eastern District of North Carolina. The remaining allegations in Paragraph 9 are denied.

Three-Judge District Court

10. It is admitted that the convocation of a three-judge district court is required to adjudicate this action as required by 28 U.S.C. § 2284. The remaining allegations in Paragraph 10 are denied.

History of the Case

11. Paragraph 11 is admitted upon information and belief.

12. Paragraph 12 is admitted.

13. It is admitted that North Carolina became entitled to twelve representatives in Congress as a result of the 1990 Census, and that the General Assembly undertook to prepare a redistricting plan that would contain twelve districts. The allegations in Paragraph 13 are denied.

14. It is admitted on July 9, 1991, the General Assembly enacted a congressional redistricting plan which included one majority African American district. All remaining allegations of Paragraph 14 are denied.

15. It is admitted that the Civil Rights Division of the Department of Justice denied preclearance of the 1991 plan under Section 5 of the Voting Rights Act. The remaining allegations in Paragraph 15 are denied.

16. It is admitted that on January 24, 1992, the General Assembly enacted a second congressional redistricting plan which included two majority African American districts. All remaining allegations of Paragraph 16 are denied.

17. Paragraph 17 is admitted.

18. Paragraph 18 is a legal contention which does not require an answer.

19. The allegations of Paragraph 19 constitute legal contentions. To the extent an answer is required, the courts' opinions speak for themselves and any remaining allegations are denied.

20. Paragraph 20 is admitted.

21. It is admitted that subsequent proceedings were stayed in this action pending the outcome of the proceedings in the *Shaw* litigation, including possible legislative action by the General Assembly to enact a new congressional redistricting plan to cure the constitutional defect held to exist in the 1992 plan. Any remaining allegations of Paragraph 21 are denied.

ANSWER OF DEFENDANT-INTERVENOR, CONTINUED . . .

22. Paragraph 22 is admitted.

23. It is admitted that as a result of the general elections conducted in November, 1996 under the redistricting plan which in June, 1996 the Supreme Court had ruled unconstitutional, six Democrats and six Republicans were elected to Congress and continue to serve there at the present time. It is admitted that Melvin Watt, and Eva Clayton are African American, registered Democrats, and members of Congress. The remaining allegations in Paragraph 23 are denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. Paragraph 27 is denied.

28. Paragraph 28 is denied.

29. Paragraph 29 is denied.

ANSWER OF DEFENDANT-INTERVENOR, CONTINUED . . .

Claim for Relief

30. Defendant intervenors incorporate and reallege their responses to prior allegations.

31. Paragraph 31 is denied.

32. Paragraph 32 is denied.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.

35. Paragraph 35 is denied.

36. Paragraph 36 is denied.

FIRST DEFENSE

Plaintiffs Cromartie and Muse are barred from bringing this action by the doctrines of res judicata and collateral estoppel.

SECOND DEFENSE

The 1997 Remedy Plan is not a racial gerrymander.

THIRD DEFENSE

Racial considerations did not predominate, and traditional districting principles were not subordinated in the construction or design of the 1997 Remedy Plan or in any of the districts in the Plan.

FOURTH DEFENSE

The State had a compelling interest in creating a majority African American district in the area of the State covered by the First District in order to comply with Section 2 of the Voting Rights Act, as amended, 42 U.S.C. § 1973. The African American population in that area of the State is sufficiently large and geographically compact to afford the opportunity of creating a majority African American district and is politically cohesive. The white population in that area votes sufficiently as a bloc to enable it usually to defeat the African American population's preferred candidate when elections are conducted in political units with a majority of white voting age residents. The 1st congressional district is narrowly tailored to serve that compelling interest.

FIFTH DEFENSE

The State had a compelling interest in creating a majority African American district in the area of the State covered by the First District in order to comply with Section 5

of the Voting Rights Act, as amended, 42 U.S.C. § 1973c, and that district is narrowly tailored to serve that interest.

SIXTH DEFENSE

A majority African American district is required in the area of the State covered by the First District in order to remedy past discrimination against African American voters in congressional redistricting, voter registration, political participation, and elections.

WHEREFORE, defendant intervenors respectfully pray that:

1. This action be dismissed;

2. Plaintiffs be taxed with the cost of this action; and

3. Defendant intervenors have such other and further relief as the Court deems just and proper.

This 22nd day of May, 1998.

Respectfully submitted,

/s/ Adam Stein
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[Certificate of Service omitted in printing]